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Court Puts Retroactive Climate-Change Cost-Shifting State Law on Hold

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In ***West Virginia v. James***, the Northern District of New York granted summary judgment to a coalition of states and industry plaintiffs, holding that New York's Climate Change Superfund Act is preempted by federal law. This is the first federal merits ruling on a state climate-superfund law, and it gives companies, investors, and counsel an early look at how courts may treat efforts to convert global climate impacts into retroactive balance-sheet liability.

The New York Act required major fossil fuel producers and refiners to pay $75 billion over 25 years for climate-adaptation projects in New York. The court held that New York could not use state law to impose retroactive liability for greenhouse-gas emissions worldwide.

The ruling matters beyond New York because other States are pursuing similar efforts to shift climate-adaptation costs to carbon-intensive industries. For companies with long operational histories, the issue is not only whether a particular statute survives. It is whether climate-cost-allocation theories become durable enough to affect litigation reserves, disclosures, permitting strategy, government relations, and transaction diligence.

NY's Statute Imposed Retroactive Liability for Climate Costs

Enacted in 2024, the Act created a "climate change adaptation cost recovery program" funded by entities responsible for more than one billion tons of covered greenhouse-gas emissions during a defined statutory period.

The statute-imposed liability for past emissions from fossil fuel extraction and refining worldwide—not just in New York. To the court, the Act looked less like a local funding measure than a state-law effort to allocate responsibility for interstate and global emissions, an area where federal law, federalism limits, and foreign-affairs concerns sharply constrain state authority.

The Decision

The court focused on the statute's practical effect. It was bound by the Second Circuit's 2021 decision in ***City of New York v. Chevron Corp.***, which rejected New York City's state-law tort claims seeking climate-related damages from fossil fuel producers. The Second Circuit held that climate-tort claims based on global greenhouse-gas emissions were preempted by federal common law because they implicate uniquely federal interests, including uniform treatment of interstate pollution and national energy policy.

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New York argued its statute was different from a common-law nuisance claim because it sought compensation for past emissions rather than prospective emissions controls. The court rejected this distinction, ruling that *City of New York* foreclosed the Act's emissions-based liability claim.

Because the Act imposed strict liability for worldwide extraction and refining emissions, the court found it "simply beyond the limits of state law." The Clean Air Act did not authorize such a state-law compensation scheme, and foreign-affairs preemption separately barred demands directed at foreign producers whose emissions and conduct were not confined to New York.

Climate Superfund vs. Tort Liability and *Suncor*

The New York Act was one of many efforts by States to impose liability for global greenhouse gas emissions, and courts in other circuits and some state supreme courts have openly disagreed with the Second Circuit's approach. The U.S. Supreme Court is preparing to hear one such case, ***Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County***—scheduled for argument October 5—which asks whether federal law precludes state-law claims seeking relief for injuries allegedly caused by interstate and international greenhouse-gas emissions.

Suncor is not a climate-superfund case; it involves Colorado state-law tort claims. But the overlap is direct. Both cases ask whether state law can shift climate costs to energy companies based on global emissions. If the Supreme Court broadly precludes those claims, climate-superfund statutes will face a steeper path. If it allows Boulder's claims to proceed, states will argue that legislative cost-recovery programs deserve at least as much room as judge-made tort claims.

Either way, the practical issue is authority: who may assign responsibility for global emissions, through what legal mechanism, and with what degree of retroactive effect?

What the Regulated Community Should Know

Three takeaways for the regulated community.

1. **Labels will not control**. States may be unable to avoid preemption by framing claims in terms of tort or statutory cost recovery. Courts will likely ask what the claim does in practice: does it assign liability for interstate or global emissions, and does it infringe on federal interests?

2. **Preemption is the main event**. The *West Virginia v. James* court didn't need to reach every constitutional challenge. It relied on federal preemption, the Clean Air Act, and Second Circuit climate-liability precedent. For similar laws, the key question is whether the state created a genuinely local program or a mechanism for allocating responsibility for global emissions.

3. **The ruling may slow, not stop, climate-superfund efforts**. The decision gives opponents a roadmap, but courts and tribunals outside the United States are moving differently. The International Court of Justice's 2025 **climate advisory opinion**, requested after small-island-state advocacy, held that climate change implicates state duties to prevent significant harm to the climate system. (For more, see **here**.) The ECHR's judgment in ***Greenpeace Nordic v. Norway*** points in the same procedural direction, requiring governments to confront project-specific climate consequences before locking in key approvals—including downstream and transboundary emissions where relevant. (For more, see **here**.) That does not answer U.S. preemption questions. But it underscores a

broader trend: outside the United States, courts and tribunals are increasingly treating climate impacts as legally cognizable and decision-forcing. That trend will keep pressure on governments and companies, even if U.S. courts limit state-law climate-liability theories.

What Comes Next

The ruling does not resolve who should pay for climate adaptation. It shows the legal risk of using state law to impose retroactive liability for nationwide and worldwide emissions. New York may appeal, and other states may narrow pending bills, add local-nexus provisions, or try to distinguish their statutes from New York's worldwide-emissions model.

For corporate counsel, the practical lesson is not just to track climate-superfund bills as environmental legislation. These bills may present as litigation, disclosure, government-relations, environmental, and transaction-diligence risks. Even if New York's law remains invalid, the underlying theory will not disappear, governments will keep looking for ways to shift climate-adaptation costs, and companies will keep contesting which institutions have authority to impose on them. (For more, see **here**.)