

Law research article paints dismal picture for litigation against greenhouse gas emitters

November 4 2014, by Marvin Kropko

Legal attempts to deter major emitters of environment-damaging greenhouse gases (GHGs) have been ineffective and are unlikely to have much effect for years, a Case Western Reserve School of Law professor concludes in peer-reviewed research published in the law journal *Jurimetrics*.

The article, "Pleading Patterns and the Role of Litigation as a Driver of Federal Climate Change Legislation," by Juscelino F. Colares, with a statistical assist from Kosta Ristovski, is based on an analysis of 178 federal and state lawsuits and the pleading patterns that emerge from those cases. Their findings suggest that GHG emitters, if not motivated by fear of litigation, are unlikely to shift from blocking to supporting emissions-restricting legislation.

Colares, a [climate-change law](#) expert and associate director of the Frederick K. Cox International Law Center at Case Western Reserve in Cleveland, provides detailed legal analysis of the data. Ristovski, a research scientist at Big Data Lab Hitachi America, in Santa Clara, Calif., provides the research article with statistical techniques and graphical displays based on the cases studied.

Jurimetrics, The Journal of Law, Science, and Technology, is a publication of the American Bar Association's Center of Science & Technology Law, at Arizona State University.

Man-made GHGs, such as carbon dioxide and methane, contribute to

global warming and other environmental effects, according to the U.S. Environmental Protection Agency (EPA).

When storm surges, coastal erosion and landslides harm communities, environmental lawsuits seeking to restrict GHG emitters become more likely. Yet, Colares found that tort suits, often the most threatening and costly to major emitters, are rare (only 3 percent of the cases included tort claims).

"Legal remedies under current law are very limited," Colares said. "Due to the diffuse nature of climate change effects (emissions know no boundaries, and their effects are spread around the globe), linking an emission source to any localized climate change effect is very difficult."

This causality issue, Colares said, explains why, to date, climate-change litigation "does not appear to have been more than a minor nuisance to major GHG emitters."

According to the EPA, Greenhouse gases can remain in the atmosphere for varying amounts of time. Some are more effective than others at making the planet warmer through a greenhouse effect.

The cases Colares and Ristovski studied share a common thread. The cases were drafted by plaintiffs seeking to have courts impose damages or tighter controls on activities associated with GHG emissions. Because proving causality in this kind of litigation is so difficult, the overwhelming majority of claims focus on regulatory issues, the research shows.

Defendants were not always major GHG emitters, however. Some were federal or state government agencies or local governments being urged to take mitigating action or stop perceived GHG emissions. These complaints would invariably raise GHG emitters' costs.

The results of this research are surprising because they tell a consistent story: The high frequency of regulatory pleading is unlikely to induce major GHG emitters to forego their current opposition to legislative reform.

"Major emitters are not likely to support federal legislation that restricts emissions in exchange for litigation peace, when litigation is not perceived as a threat," Colares said.

More information: Colares, Juscelino F. and Ristovski, Kosta, "Pleading Patterns and the Role of Litigation as a Driver of Federal Climate Change Legislation (2014)." 54 *Jurimetrics* 329 (2014); Case Legal Studies Research Paper No. 2014-14. Available at SSRN: ssrn.com/abstract=2456277

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