

# ADR and the Future of Climate Change Disputes

By Elizabeth Emerson & Brittany L. Adikes

January 16, 2026

**A**s the impacts of our changing climate become more apparent, litigation has emerged as one of the primary tools for holding fossil fuel companies and governments accountable when legislative efforts fall short. The complexities of such lawsuits, however, underscore the limitations of traditional litigation.

According to data collected and maintained by the Sabin Center for Climate Change, in 2025, there are more than 3,000 climate-related lawsuits in the United States alone. See, Sabin Ctr. for Climate Change Law, Climate Litigation Database. Each one of these matters involves complex substantive and procedural issues, many of which do not make it past the pleadings stage. When faced with a desire to hold entities accountable for their role in global environmental matters, state governments and the judiciary often lack the tools and/or authority to implement meaningful, enforceable changes.

Drawing on the lessons from other high-stakes, large-scale public health crises – such as tobacco and opioids – environmental matters may be better addressed through ADR, such as mediation, arbitration, negotiation and settlement, which provide more flexible, cooperative, and far-reaching solutions, where each party can play a role in developing more enhanced resolutions that appeal to all sides.

## The Limits of Traditional Litigation

For decades, litigants have advanced a range of claims against oil and gas companies and



**Climate change**

governments, from consumer protection and nuisance to constitutional and human rights violations. Yet these claims are often dismissed on procedural or jurisdictional grounds, such as lack of standing, difficulties proving causation, and arguments that the action is preempted by federal law. Even when cases survive pre-trial motions, they face years of costly litigation with uncertain outcomes.

Yet the deeper challenge is structural: courts are not designed to make policy. Judges decide specific cases and controversies confined by what is in the record before them. Judges are not charged with developing broad regulatory frameworks or crafting creative, forward-looking solutions to global crises. Nor do judges typically possess the subject-matter expertise

required for the complexities of climate science, international corporate accountability, or environmental regulation.

Recent case law illustrates these challenges. Claims by the Attorney General of the State of New Jersey against Exxon Mobil were dismissed in 2025 as preempted by federal law, as were New York City's lawsuits against Exxon Mobil and Chevron for, among other reasons, failure to state a claim and preemption by federal law. Platkin, et al. v. Exxon Mobil Corp., et al., Superior Court of New Jersey, Mercer County, Docket No. MER-L-001797-22; City of New York v. Exxon Mobil Corp., New York Supreme Court, New York County, Docket No. 24-1568-cv; and City of New York, v. Chevron Corp., United States Court of Appeals for the Second Circuit, Docket No. 18-2188. Honolulu's case against major oil companies has survived numerous dismissal attempts and is still pending, as has Vermont's lawsuit against Exxon Mobil, but the outcomes remain uncertain and the process will likely take years. City & Cnty. of Honolulu v. Sunoco LP, et al., Hawaii Circuit Court, Civil No. 1CCV-20-0000380(LWC); see also, City & Cnty. of Honolulu v. Chevron Corp., et al., Hawaii Court of Appeals, Case No. CAAP-22-0000135; see also, State of Vermont v. Exxon Mobil Corp., et al., Superior Court of Vermont, Chittenden County, No. 21-CV-02778. These inconsistent results highlight the problem of using traditional litigation to address a global, systemic issue.

### Why ADR Fits the Climate Crisis

In many ways climate-related disputes are more complex and global than either tobacco or opioids, but the lessons are clear: traditional litigation alone cannot solve systemic public harms. ADR, on the other hand, may offer several advantages.

**Flexibility:** Unlike courts, ADR allows for tailored solutions that go beyond damages. Settlements could include emissions targets, investments in renewable energy, commitments to long-term environmental monitoring and a buy-in by all parties.

- Speed and cost:** ADR can resolve disputes faster and more affordably than years of litigation that may ultimately end up in a dismissal.

- Stakeholder engagement:** ADR can bring together both national and international governments, corporations, NGOs, and affected communities, ensuring solutions reflect a broader range of interests and resolutions that appeal to all sides.

- Global precedent:** A successful collaborative resolution between governments and fossil fuel companies could set an international model for resolving environmental disputes and impacting corporate behavior worldwide.

In practical terms, ADR could achieve what courts cannot: enforceable commitments to change global corporate behavior, financial reparations tied to climate mitigation, and frameworks for cooperation that extend beyond borders.

### Lessons Learned from Tobacco and Opioids

Climate litigation today resembles earlier attempts to use courts to address large-scale public health crises, such as opioids and tobacco. While addressing the national crises involving both tobacco and opioids, litigation produced limited progress. It was not until ADR was introduced that comprehensive frameworks for resolution were created.

#### Tobacco

Early lawsuits against tobacco companies failed, with courts often holding individuals responsible for their own decision to smoke. Change only came when the parties eventually turned to ADR, which ultimately resolved the disputes. Through ADR, dozens of lawsuits resulted in the 1998 Master Settlement Agreement between 52 states and territories and the four largest tobacco companies, the largest civil litigation settlement in U.S. history. See, The Master Settlement Agreement, National Association of Attorneys General, <https://www.naag.org/our-work/naag-center-for-tobacco-and-public-health/the-master-settlement-agreement/>

Through mediation and negotiation, the parties reached a \$246 billion settlement spread over 25 years. The MSA imposed advertising restrictions, created the Truth Initiative to combat nicotine addiction, and forced the tobacco industry to take accountability. U.S. cigarette consumption subsequently dropped by more than 50 percent, and high school smoking rates fell from 36 percent in 1997 to 6 percent in 2019.

The MSA demonstrated the ability of ADR to resolve sprawling state-level disputes and to generate reforms that courts could not have imposed on their own.

### Opioids

The opioid epidemic followed a similar trajectory. Early litigation against manufacturers, retailers and distributors floundered. Eventually, state attorneys general coordinated lawsuits that led to large-scale settlements through ADR.

The 2021 National Opioid Settlements secured \$26 billion from Johnson & Johnson and the three largest drug distributors, the largest national opioid settlement to-date. This landmark settlement resolved thousands of individual lawsuits filed by state and local governments across the United States, which, without the help of ADR, may not have resulted in any relief for the claimants. See also, *National Opioid Litigation: Settlement Agreements*.

More recent waves of disputes were resolved using ADR and brought in additional settlements with pharmacy chains and manufacturers worth billions more. These agreements included not only financial reparations but also structural reforms, such as prohibiting entities from marketing or selling opioids for a set number of years or in the United States entirely, removing and restricting ownership rights, requiring distributors and manufacturers to change their business practices, and ordering funding directly to communities to

support addiction treatment and prevention programs across the country.

Like the tobacco MSA, the opioid outcomes are not perfect, but they reflect the unique ability of ADR to involve all stakeholders—governments, companies, public health experts, and communities—and to move beyond blame toward comprehensive solutions. ADR offers a solution on a grander scale as opposed to litigation, with an outcome that is mutually beneficial to all parties with tangible results, that individual litigants could otherwise not obtain on their own.

### Conclusion

Litigation will undoubtedly continue to play a role in shaping the climate accountability landscape, but large-scale ADR offers a more effective path toward real change. Climate change is a global matter that cannot be resolved by individual state or local government action. Without at least a national resolution, the effects of climate change will continue. By allowing for creativity, inclusivity and enforceable commitments, ADR can do what courts alone cannot: resolve disputes in ways that acknowledge the systemic nature of climate disputes and involve all parties.

**Elizabeth Emerson** is of counsel at Ruskin Moscou Faltischek, P.C., and a panelist at FedArb.

**Brittany L. Adikes** is an associate at Ruskin Moscou Faltischek, P.C.

