On December 6, 2010, the U.S. Supreme Court accepted certiorari in *American Electric Power v. Connecticut*, a public nuisance case which may have broad implications on climate change litigation in the federal courts. The issues accepted for review by the Supreme Court are:

1. Whether states and private parties may seek emissions caps on utilities for their alleged contribution to global climate change;
2. Whether a cause of action to cap carbon dioxide emissions can be implied under federal common law; and
3. Whether claims seeking to cap carbon dioxide emissions based on a court’s weighing of the potential risks of climate change against the socioeconomic utility of defendants’ conduct would be governed by “judicially discoverable and manageable standards” or could be resolved without “initial policy determination[s] of a kind clearly for nonjudicial discretion.”

The plaintiffs in *American Electric Power* filed suit against private utility companies seeking to restrict those companies’ greenhouse gas emissions, or in the alternative, to impose liability on those companies for the impacts of emissions on climate change. The Southern District of New York dismissed the lawsuit noting that the claims presented “policy determination[s]” of the type properly reserved for Congress, including “the implications of [emissions reductions] on the United States’ ongoing negotiations with other nations concerning global climate change … [and] on the United States’ energy sufficiency and thus its national security.” The 2nd Circuit Court of Appeals reversed the Southern District of New York and, relying on federal common law, (1) allowed federal courts to impose emissions caps on individual companies; and (2) permitted federal common law claims seeking to hold companies liable for the potential impacts of emissions of carbon dioxide.

*American Electric Power* is one of four major public nuisance cases analyzing common law claims against individual defendants for their contributions to climate change.1 In each of the four cases, a federal district court dismissed the claims as non-justiciable political questions or, in two of the cases, for lack of standing. Reviews are pending in those cases. The *American Electric Power* case has been noted as a case to watch by legal commentators because a decision by the U.S. Supreme Court may answer whether or not there is an actionable federal common law claim for public nuisance in the climate change context.

1 The other three cases are: *California v. General Motors Corp.* (N.D. Cal.); *Native Village of Kivalina v. ExxonMobil Corp.* (N.D. Cal.); and *Comer v. Murphy Oil USA* (S.D. Miss.)