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STEREO

2023-2024
Case Law Update



GREENWASHING

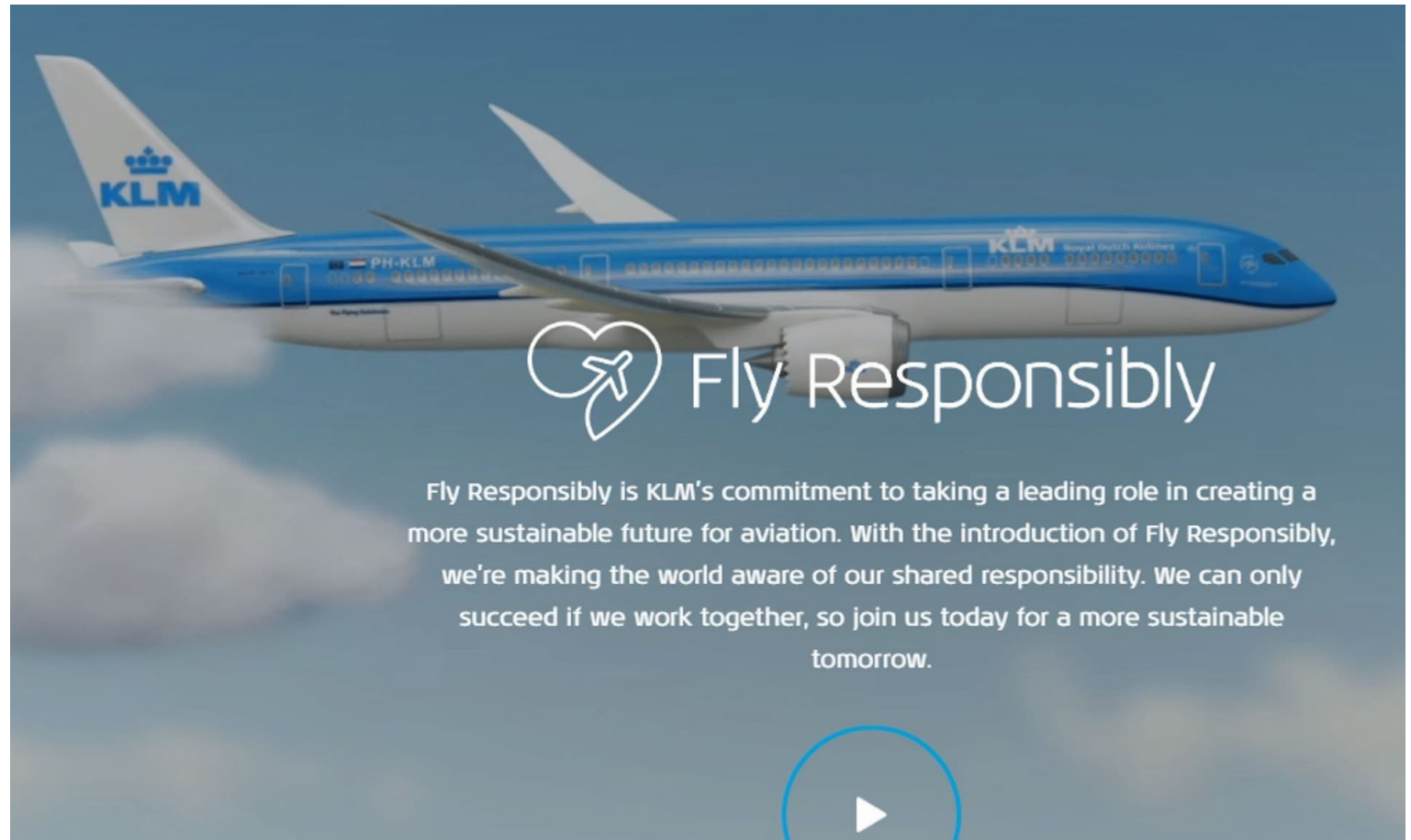
Berrin v. Delta Air Lines (C.D. Cal. Mar. 28, 2024)



“World’s first carbon-neutral airline”

- State law claims not preempted by Airline Deregulation Act
- No allegations of intent to purchase Delta flights in future = no standing
- Dismissed w/o prejudice

Airline Greenwashing Cases to Watch



Ellis v. Nike USA, Inc. (E.D. Mo. Mar. 28, 2024)

- Failed to plausibly allege Nike's products were not made with recycled or sustainable materials
- Failed to specify which statements induced plaintiff to buy which products



Dorris v. Danone Waters of Am. (S.D.N.Y. Jan. 10, 2024)



- “‘Carbon neutral’ is an ambiguous term, and evidence shows that consumers are confused by it.”
- “It is plausible then that the ambiguous term ‘carbon neutral’ ... could mislead a reasonable consumer.”
- Motion to dismiss denied in part

Joseph Lurenz v. The Coca-Cola Co. (S.D.N.Y. 2024)



- Alleged false marketing – not “all-natural ingredients” because contains PFAS
- Dismissed without prejudice: Single juice sample not linked to plaintiff’s purchase
- Petition refiled with more test results

Greenwashing Cases to Watch



Packaging:

We are working toward PepsiCo's **goal of 100% of packaging to be recyclable, compostable or biodegradable by 2025**, piloting next-generation snack packaging that is industrially compostable in 2021.





Held v. Montana (1st Dist. Ct. Mont. Aug. 14, 2023)

- Montana Constitution: “All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment....”
- Montana Environmental Policy Act (MEPA) Limitation: no consideration of GHG emissions & climate change impacts
 - Unconstitutional
 - Permanently enjoined



United States v. U.S. District Court for the District of Oregon Eugene (Juliana v. United States) (9th Cir. May 1, 2024)

- No standing (2020) – district court instructed to dismiss
 - Article III court cannot “step into the shoes” of the political branches to provide the requested relief
- District court allowed plaintiffs to amend
- 3-judge panel of 9th Circuit issued writ of mandamus ordering dismissal without leave to amend (2024)
- En banc review denied



Baltimore v. BP PLC (July 10, 2024)

- Based on alleged deception regarding fossil fuel impact on climate
- Dismissed: Claims stem from a “global phenomenon caused by emissions from sources in literally every state and nation in the world”



Sunoco LP v. Honolulu (Oct. 31, 2023)

- “The CAA does not occupy the entire field of emissions regulation.”
- Petition for writ of certiorari filed with U.S. Supreme Court
 - Are state-law claims (nuisance, failure to warn, and trespass) seeking damages for global climate change impacts caused by interstate and international GHG emissions precluded by the Clean Air Act and federal common law?



Climate Suits to Watch

- *Alabama v. California*
 - *California ex rel. Bonta v. Exxon Mobil Corp.*
 - *Connecticut v. Exxon Mobil Corp.*
 - *Minnesota v. Am. Petroleum Inst.*
 - *Platkin v. Exxon Mobil Corp.*
 - *Rhode Island v. Chevron Corp.*





CERCLA

68th St. Site Work Group v. Alban Tractor Co. Inc. (4th Cir. June 2024)

- No knowledge requirement for arranger liability under CERCLA
- Arrangers liable even if unaware waste is hazardous at time of making arrangements
- Rehearing requested



MRP Properties Company, LLC v. U.S. (6th Cir. 2023, pet. denied)

- U.S.'s regulation of petroleum industry during WWII ≠ “operation” of refineries under CERCLA
- “Operator” makes “day-to-day” decisions “exercise[ing] control over the waste disposal process”

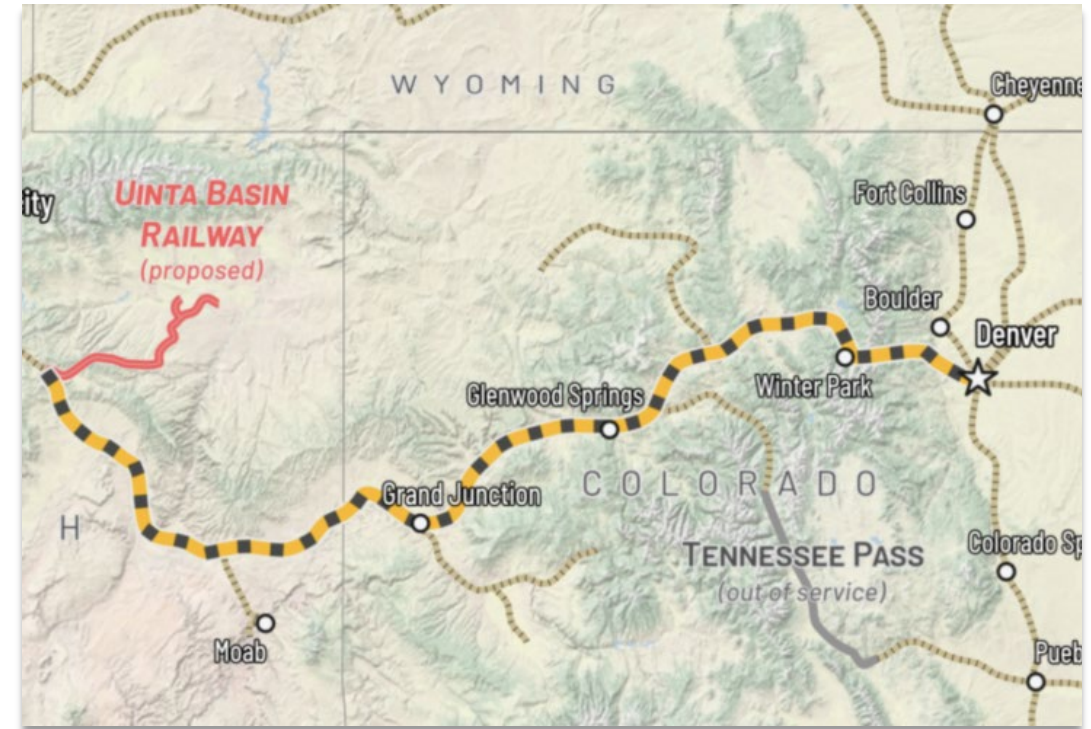




NEPA

Eagle County v. Surface Transportation Board (D.C. Cir. 2023, pet. granted)

- 88-mile rail line to connect 2 termini in Utah to the national rail network for transportation of crude oil for refining along the Gulf Coast
- Must consider both upstream and downstream environmental impacts
- U.S. Supreme Court granted petition to review
 - Does NEPA require consideration of *all* environmental impacts of a project or only those within its jurisdiction?

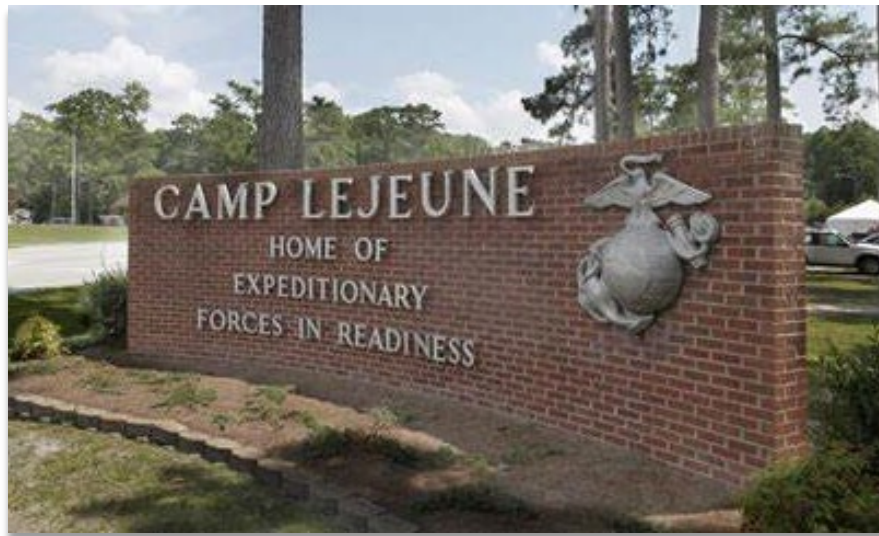




WATER

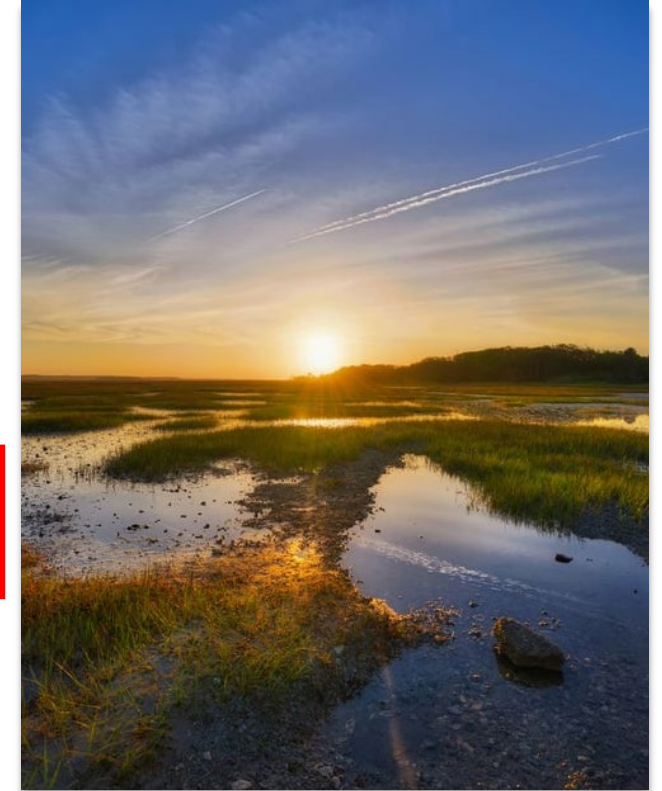
Camp Lejeune Water Litigation v. U.S. (E.D.N.C. Feb. 6, 2024)

Camp Lejeune Justice Act claimants
must prove general & specific
causation



White v. EPA (E.D.N.C. June 18, 2024)

1. Traditional navigable waters, the territorial seas, and interstate waters;
2. Impoundments of “waters of the United States”;
3. Relatively permanent, standing or continuously flowing tributaries to paragraph (a)(1)-(2) waters or impoundments;
4. **Wetlands having a continuous surface connection to paragraph (a)(1)-(3) waters, impoundments, or tributaries;**
5. Relatively permanent, standing or continuously flowing intrastate lakes and ponds with a continuous surface connection to a paragraph (a)(1)-(3) water, impoundment, or tributary



White v. EPA (E.D.N.C. June 18, 2024)

- Preliminary injunction denied
- “A wetland with a continuous surface connection is a ‘water of the United States’ *because* that continuous surface connection renders the wetland practically indistinguishable from the jurisdictional water to which it is connected... The continuous surface connection powers the test.”



A stylized vinyl record with a dark gray background and concentric black lines. A thick, multi-colored ring (red, orange, yellow, green, blue) encircles the center. The word "pillsbury" is written in a white, lowercase, sans-serif font at the top of the center. Below it, the word "STEREO" is written in a white, uppercase, sans-serif font. A small blue circle is positioned to the right of "STEREO". At the bottom of the center, the words "Thank you!" are written in a white, cursive script font.

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Thank you!

