

Insurer Subrogation Claims: The Next Frontier for Climate Litigation

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ABSTRACT: As climate change increases the frequency and destructiveness of extreme-weather events, first-party insurers’ costs have skyrocketed from the resulting policy claims. Insurers and experts have recognized these risks since the early 1990s, but the industry has been slow to meaningfully respond. While an extensive body of insurance–climate literature exists, comparatively little has been written about one of insurers’ most important risk-management tools: subrogation. This Note argues that first-party insurers should bring aggregate subrogation claims against major greenhouse gas emitters to recoup casualty losses from storms strengthened by climate change.

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INTRODUCTION

Climate change presents an existential crisis for the insurance industry—one that industry experts have recognized since the early 1990s.¹ Scholars have written extensively about insurers’ role in the climate crisis, often arguing that insurers should use their power to “regulate” by restructuring

1. Gary S. Guzy, *Insurance and Climate Change*, in GLOBAL CLIMATE CHANGE AND U.S. LAW 541, 544 (Michael B. Gerrard ed., 2007) (“Beginning with the 1992 Earth Summit in Rio de Janeiro, several European-based insurers started to develop a framework for a sustainability focus for the industry that would establish a linkage between environmental and economic issues.”).

policies to discourage risky behaviors.² But while consumers typically think of minimizing claims payouts and maximizing policyholder premiums as insurers' primary loss-reduction tools, insurers' most powerful tool is less well known: subrogation.³

Despite subrogation's important role in the insurance business, comparatively little has been written about it as a method by which insurers could recover climate-related costs, and the works that mention it do so only briefly.⁴ With this Note, I aim to fill this gap in the literature by arguing that first-party insurers should bring aggregate subrogation claims against major greenhouse gas emitters to recoup casualty losses from storms strengthened by climate change.⁵

Part I describes the increasing damages from human-caused climate change, plaintiffs' difficulty getting redress in court for climate-related injuries, what climate-related losses insurers are experiencing, and their tools for mitigating such losses. Part II analyzes how insurer climate subrogation overcomes many of the challenges traditional climate litigants face and argues that environmentalists and insurance companies should pursue climate subrogation claims in the wake of major disasters. Part III expands on these arguments by detailing the non-monetary benefits of climate subrogation suits that could indirectly alleviate climate-related financial pressures. The central argument of this Note is that it is worthwhile for insurers to use climate subrogation for two main reasons: to recover dwindling profits from increased

2. See, e.g., Omri Ben-Shahar & Kyle D. Logue, *Outsourcing Regulation: How Insurance Reduces Moral Hazard*, 111 MICH. L. REV. 197, 200–01 & nn.6–10 (2012) (compiling sources). Ben-Shahar and Logue further argue that “private insurance companies, utilizing the methodologies of actuarialism, private contracting, and ex post claim investigation, *can and already do* perform some rulemaking and adjudication,” and that insurance “develops templates to regulate behavior in ways that are potentially more finely tuned and information sensitive than some forms of government control.” *Id.* at 201 (emphasis added).

3. See On Subrogation, *Refresh: What Is Subrogation?*, RATHBONE GRP. (July 22, 2022), <https://rathbonegroup.libsyn.com/refresh-what-is-subrogation> [<https://perma.cc/6DZZ-FTD8>].

4. See, e.g., Ben-Shahar & Logue, *supra* note 2, at 242 (mentioning subrogation in a single paragraph); Daniel A. Farber, Lecture, *Tort Law in the Era of Climate Change, Katrina, and 9/11: Exploring Liability for Extraordinary Risks*, 43 VAL. U. L. REV. 1075, 1122 (2009) (same). But see Willy E. Rice, “Grossly Negligent Utilities,” “Unimaginable Property Damage,” and the Scope of Liability Insurers’ Duty to Indemnify Subrogated Property Insurers—Probative and Empirical Inferences from Courts’ Divided Subrogation and Indemnification Decisions, 17 OHIO ST. BUS. L.J. 53, 79–83 (2023) (detailing insurer subrogation against utility companies following major disasters, though not addressing climate change harms or fossil fuels).

5. Although this Note focuses primarily on first-party property and casualty insurance, much of the discussion is relevant for reinsurers—insurers for insurance companies—who also stand to benefit from such lawsuits. Reinsurers, who often bear the lion’s share of the cost following catastrophic events, should be particularly interested in the possibility of recovering some of these losses, in no small part because they would often be the first to recover for funding such lawsuits. Mary E. Borja, *Rights of Insurers to Recover from Third Parties*, AM. BAR ASS’N (May 28, 2019), <https://www.americanbar.org/groups/litigation/resources/newsletters/insurance-cover-age/recover-from-third-parties> (on file with the *Iowa Law Review*) (“[A] number of courts have indicated that . . . ‘[w]hen more than one insurer contributes to the payment of a loss, the highest level insurer is . . . entitled to be made whole before a lower level insurer can be reimbursed.’” (quoting *Fireman’s Fund Ins. Co. v. TD Banknorth Ins. Agency, Inc.*, 72 A.3d 36, 46 (Conn. 2013))).

natural disasters and to slow the future losses that will result from continued carbon emissions.

I. CLIMATE CHANGE IS AN EXISTENTIAL CRISIS

Human-caused climate change creates enormous risks for every part of the economy and environment. This Part discusses the world as it is today. Section I.A connects the existing danger of natural disasters with climate scientists' predictions for increasing losses. Section I.B describes the numerous challenges traditional climate plaintiffs face to obtain redress in court. Section I.C describes how insurers' costs have increased with the impacts of human-caused climate change and how subrogation cuts these costs.

A. CLIMATE SCIENTISTS PREDICT INCREASING LOSSES

As the world warms, natural disasters are increasing in strength and destructive power.⁶ Scientists agree that human activity is causing significant climate change, and most expect life on Earth to get worse before it gets better.⁷ Warmer temperatures allow the atmosphere to hold more water, "meaning that when rainfall occurs, the amount of rain falling in that event tends to be greater," which results in a higher frequency of "extreme precipitation events."⁸ Greenhouse gases generated by human activity have built up in the atmosphere, and as "concentrations continue to increase, the cumulative impact will be to accelerate temperature change."⁹ Temperature fluctuations and rainfall increases have exacerbated the destructive power of extreme and moderate weather events alike, including hurricanes, tornadoes, winter storms, hail, and even thunderstorms.¹⁰

The increased frequency and strength of extreme weather creates challenges because it increases costs and decreases the predictability of risk. Scientists have expressed a "broad consensus that the further and faster the Earth system is pushed towards warming, the greater the risk" that extreme

6. E.g., Kieran T. Bhatia et al., *Recent Increases in Tropical Cyclone Intensification Rates*, 10 NATURE COMM'NS, no. 635, 2019, at 1, 2.

7. Alan Buis, *A Degree of Concern: Why Global Temperatures Matter*, NASA (June 19, 2019), <https://climate.nasa.gov/news/2878/a-degree-of-concern-why-global-temperatures-matter> [<https://perma.cc/438Q-2JHD>] ("[H]uman activities are estimated to have increased Earth's global average temperature by about 1 degree Celsius (1.8 degrees Fahrenheit), a number that is currently increasing by 0.2 degrees Celsius (0.36 degrees Fahrenheit) every decade. At that rate, global warming is likely to reach 1.5 degrees Celsius above pre-industrial levels sometime between 2030 and 2052, with a best estimate of around 2040.").

8. Donald J. Wuebbles et al., *Our Globally Changing Climate*, in 1 U.S. GLOB. CHANGE RSCH. PROGRAM, CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT 35, 48 (Donald J. Wuebbles et al. eds., 2017), https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf [<https://perma.cc/AFY8-H5HL>].

9. Buis, *supra* note 7.

10. James P. Kossin et al., *Extreme Storms*, in 1 CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT, *supra* note 8, at 257, 262–65.

weather “surprises” will result.¹¹ Rising temperatures increase the probability of unexpected “compound extremes,” which “may consist of multiple extreme events or of events that by themselves may not be extreme but together produce a multi-event occurrence.”¹² These multi-event occurrences have the potential to create “additive or even multiplicative effects.”¹³

One example of devastating compound extremes is when wildfires are followed by heavy rain, which “can in turn increase the risk of landslides and erosion” and “radically increase emissions of greenhouse gases” as carbon is released from displaced soil.¹⁴ The risk of this wildfire-landslide combination is particularly high in Southern California, where researchers expect such events to continue growing in frequency.¹⁵ While scientists have made enormous leaps in predictive weather modeling, compound events create greater unpredictability in an already unstable system, making risk assessments—and insurance premium pricing—even more difficult.

B. CLIMATE CHANGE LITIGATION

As climate impacts have become more obvious, so too have efforts to stop them. Climate change litigation has increased dramatically in recent years, but progress has been slow, and many litigants have struggled to get redress in court.¹⁶ Major emitters have clogged up the litigation process with endless procedural motions that drag out case timelines, requiring plaintiffs to pay increasingly more in court costs and attorneys’ fees without ever reaching a hearing on the merits. Emitters have found success in two pre-merit areas: jurisdictional challenges and the doctrine of standing.

11. Robert E. Kopp et al., *Potential Surprises: Compound Extremes and Tipping Elements*, in 1 CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT, *supra* note 8, at 411, 412.

12. *Id.* at 414.

13. *Id.*

14. *Id.* at 415. Hurricane Helene, which devastated western North Carolina in late September 2024, is another example of compound extremes. *See, e.g.*, ANDREW B. HAGEN, JOHN P. CANGIALOSI, MARC CHENARD, LAURA ALAKA & SANDY DELGADO, NAT’L HURRICANE CTR., AL092024, HURRICANE HELENE 12–13 (2025), https://www.nhc.noaa.gov/data/tcr/AL092024_Helene.pdf [<https://perma.cc/2BSL-CYBC>]. Damage from the storm was compounded by a “predecessor rain event . . . that enhanced rainfall totals and exacerbated flooding impacts” by creating “saturated soil and increased stream and river levels” before Helene arrived. *Id.* at 13. Helene caused 250 deaths and, at an estimated \$78.7 billion in losses, was the seventh-costliest disaster in U.S. history. *Id.* at 18–19.

15. Jason W. Kean & Dennis M. Staley, *Forecasting the Frequency and Magnitude of Postfire Debris Flows Across Southern California*, EARTH’S FUTURE, Mar. 2021, at 1, 1.

16. MICHAEL BURGER & MARIA ANTONIA TIGRE, U.N. ENV’T PROGRAMME, GLOBAL CLIMATE LITIGATION REPORT: 2023 STATUS REVIEW 40–43, 68 (2023), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1203&context=sabin_climate_change [<https://perma.cc/WC2D-GMAR>]; JOANA SETZER & CATHERINE HIGHAM, GRANTHAM RSCH. INST., GLOBAL TRENDS IN CLIMATE CHANGE LITIGATION: 2023 SNAPSHOT 2 (2023), https://www.lse.ac.uk/granthaminstitut/e/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf [<https://perma.cc/HE9N-QLGN>].

1. Jurisdictional Challenges

Jurisdictional challenges can drag out climate cases for years,¹⁷ increasing expenses even for plaintiffs with the most meritorious cases. Defendants often delay cases by moving for removal from state to federal court, where they perceive that they will have an advantage.¹⁸ Even if they fail, these motions can take years to resolve.¹⁹ Plaintiffs commonly prefer state court because state common law underlies most tort causes of action, and because of the perception that state courts and juries are friendlier to plaintiffs than are federal.²⁰ Insurers, who are less reliant on sympathetic juries, tend to prefer

17. See, e.g., *Mayor of Balt. v. BP P.L.C.*, 31 F.4th 178, 196–97 (4th Cir. 2022) (describing extensive procedural history), *cert. denied*, 143 S. Ct. 1795 (2023); Sabin Ctr. for Climate Change L., *Mayor & City Council of Baltimore v. BP P.L.C.*, CLIMATE CHANGE LITIG. DATABASES (2025), <https://climatecasechart.com/case/mayor-city-council-of-baltimore-v-bp-plc> [<https://perma.cc/N7UF-FQEB>] (full case record).

18. See, e.g., Jeff Wilkerson & Patrick Hogan, *Class Actions 101: Considerations for Removing a Case to—and Keeping It in—Federal Court Under the Class Action Fairness Act (CAFA)*, WINSTON & STRAWN LLP: CLASS ACTION INSIDER (June 16, 2022), <https://www.winston.com/en/blogs-and-podcasts/class-action-insider/class-actions-101-considerations-for-removing-a-case-to-and-keeping-it-in-federal-court-under-the-class-action-fairness-act-cafa> [<https://perma.cc/UY6P-D6SW>] (“Removal is usually beneficial to defendants . . .”). Insurers commonly employ removal tactics as well: “The ‘general rule’ is that policyholder lawyers prefer state court, . . . while insurance company lawyers prefer federal court.” PROPERTY INSURANCE LITIGATOR’S HANDBOOK 194 (Andrew B. Downs, Heidi Hudson Raschke & Jay M. Levin eds., 3d ed. 2022).

19. For example, in *City & County of Honolulu v. Sunoco LP*, plaintiffs filed their initial complaint against Sunoco and other fossil fuel companies on March 9, 2020, and did not receive a substantive answer for more than two years. Sabin Ctr. for Climate Change L., *City & County of Honolulu v. Sunoco LP*, CLIMATE CHANGE LITIG. DATABASES (2025) [hereinafter Sabin Ctr., *Honolulu v. Sunoco*], <https://climatecasechart.com/case/city-county-of-honolulu-v-sunoco-lp> [<https://perma.cc/E6C6-MSAY>]; *City & County of Honolulu v. Sunoco LP* (1:20-cv-00163), CT. LISTENER: RECAP ARCHIVE (Nov. 12, 2024, 12:49 PM) [hereinafter RECAP, *Honolulu v. Sunoco* (D. Haw.)], <https://www.courtlistener.com/docket/17146430/city-county-of-honolulu-v-sunoco-lp> [<https://perma.cc/G8GR-JJ4B>]; *City & County of Honolulu v. Sunoco LP* (21-15313), CT. LISTENER: RECAP ARCHIVE (Oct. 13, 2024, 11:40 AM) [hereinafter RECAP, *Honolulu v. Sunoco* (9th Cir.)], <https://www.courtlistener.com/docket/63575980/city-county-of-honolulu-v-sunoco-lp> [<https://perma.cc/S5EX-ZM7D>]. Fossil fuel companies filed a notice of removal to federal court on April 15, 2020, which took nearly a year to resolve. Sabin Ctr., *Honolulu v. Sunoco*, *supra*. The plaintiffs filed their amended complaint less than a week after their case was successfully remanded to state court, but the fossil fuel defendants took another three months to respond, this time with motions to dismiss for failure to state a claim, lack of personal jurisdiction, and immunity under a California anti-SLAPP law. *Id.*; RECAP, *Honolulu v. Sunoco* (D. Haw.), *supra*. After two and a half years of litigation, including requests for continuances and stays, failed mediation, a delay in transmission, and an appeal to the Ninth Circuit, defendant Chevron finally filed an answer to the plaintiff’s initial complaint. Sabin Ctr., *Honolulu v. Sunoco*, *supra*; RECAP, *Honolulu v. Sunoco* (D. Haw.), *supra*; RECAP, *Honolulu v. Sunoco* (9th Cir.), *supra*. Less than two weeks later, the fossil fuel defendants requested another extension to file a writ of certiorari with the U.S. Supreme Court on jurisdictional questions. Sabin Ctr., *Honolulu v. Sunoco*, *supra*. This writ was denied, but the defendants filed another writ the following year, requesting the Court again review Hawai’i’s jurisdiction, this time on federal preemption grounds. *Id.* As of this writing, over five years from the plaintiffs’ original complaint, the litigation is still ongoing, and no court has ruled on a non-jurisdictional issue in the case. *Id.*

20. Aaron Jacobs, *Diversity for Jurisdictional Purposes in Federal Litigation*, JD SUPRA (Feb. 19, 2019), <https://www.jdsupra.com/legalnews/diversity-for-jurisdictional-purposes-15465> [<https://perma.cc/8Q8K-8Q8K>].

federal court, which can decide state law causes of action in diversity jurisdiction suits that meet amount-in-controversy requirements even where no federal question is presented.²¹ This preference decreases the likelihood of expensive jurisdictional fights against corporate defendants.

2. Standing Challenges

Major emitters have also had success in challenging plaintiffs' standing. Standing is a legal doctrine that limits the plaintiffs who can bring litigation to only those with actual "cases" or "controversies"—that is, those who have suffered (and adequately plead) harms sufficient to establish a dispute that courts can resolve.²² In the 1992 case *Lujan v. Defenders of Wildlife*, the Supreme Court described the test for standing as an "irreducible constitutional minimum" of three elements that plaintiffs must establish to bring a case: "injury in fact," causation, and redressability.²³

i. Injury in Fact

The first prong of the standing analysis asks whether a plaintiff has "suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical."²⁴ An "actual or imminent" injury is one that is either ongoing or is substantially likely to occur in the near future.²⁵ For example, in *Lujan*, where plaintiffs challenged a federal project that could harm endangered species, the Supreme Court found no "actual or imminent" injury where the plaintiffs lacked specific plans to travel to the impacted areas.²⁶ This lack of travel plans meant that any injury plaintiffs alleged to their own wellbeing was essentially conjecture.²⁷

/perma.cc/SGZ2-AL4N]; cf. 29 MOORE'S FEDERAL PRACTICE – CIVIL § 704.04[1][a][ii] (2024) (discussing, in the context of maritime and admiralty cases, why defense lawyers may "prefer a federal judge . . . who . . . seem[s] less partial to plaintiffs than an elected state judge shopped for by the plaintiff's attorney" or "believe that federal juries are more favorable to defendants than state juries" (footnotes omitted)).

21. 28 U.S.C. § 1332(a) (2018). Insurers can aggregate claims to meet amount-in-controversy requirements. The Supreme Court has held "that [a real party in interest can] sue in the federal court" even if its interest is comprised of many smaller claims that do not individually meet minimum amount-in-controversy requirements for federal jurisdiction. *Allstate Ins. Co. v. Hechinger Co.*, 982 F. Supp. 1169, 1172 (E.D. Va. 1997) (quoting *Bullard v. City of Cisco*, 290 U.S. 179, 188 (1933)).

22. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 574 (1992).

23. *Id.* at 560–61; see also *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) ("To seek injunctive relief, a plaintiff must show that he is under threat of suffering [an] 'injury in fact' that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury." (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000))).

24. *Lujan*, 504 U.S. at 560 (internal quotation marks omitted) (citations omitted).

25. See *id.* at 564.

26. *Id.* at 563–64.

27. *Id.*

If a plaintiff's injury is sufficiently "actual or imminent," courts determine whether it is "concrete and particularized."²⁸ The Supreme Court has described a "concrete and particularized" injury as one that is "real, and not abstract," in that it "affect[s] the plaintiff in a personal and individual way."²⁹ In *Sierra Club v. Morton*, the Court held that while environmental harm "may amount to an 'injury in fact,'" the Sierra Club was not "[it]self among the injured" because it was only indirectly impacted by the federal project it was challenging.³⁰ By contrast, courts are much more likely to find that economic damages are sufficient to establish standing.³¹ The Supreme Court has written that "[f]or standing purposes, a loss of even a small amount of money is ordinarily an injury."³² This prioritization of monetary harms means that courts are quicker to recognize that economic damages, like insurers' monetary losses from paying out more expensive claims,³³ satisfy the injury-in-fact element than would less quantifiable environmental harms.

ii. Causation

Although courts have recognized that environmental harms may satisfy the injury element of standing,³⁴ climate plaintiffs have struggled to demonstrate the second two prongs of the standing inquiry: causation or redressability.³⁵ Causation requires a plaintiff's alleged injury be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court."³⁶

28. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339–40 (2016).

29. *Id.* at 339–40, 352 (internal alterations and quotation marks omitted).

30. *Sierra Club v. Morton*, 405 U.S. 727, 734–35 (1972) ("Nowhere in the pleadings or affidavits did the [Sierra] Club state that its members use [the site of the proposed project] for any purpose, much less that they use it in any way that would be significantly affected by the proposed actions of the respondents."). The *Sierra Club* finding was based on the associational standing test, which has additional requirements from the basic standing test, but the Court found that its members could not satisfy the individual standing prong. *Id.*; see also *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977) (describing the associational standing test as requiring that: (1) the association's members have individual standing; (2) the contested issues "are germane to the organization's purpose"; and (3) the lawsuit and requested relief does not require individual members' participation to resolve). In a subrogation lawsuit, insurers need not satisfy the additional prongs of the associational standing test because insurers assume the legal rights of subrogated policyholders rather than representing their interests as a third party. *Borja, supra* note 5.

31. See, e.g., *Young Conservatives of Tex. Found. v. Univ. of N. Tex.*, 609 F. Supp. 3d 504, 510–11 (E.D. Tex. 2022) (collecting cases).

32. *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017) (internal quotation marks omitted).

33. See *infra* Section I.C.3.

34. See, e.g., *Sierra Club*, 405 U.S. at 734 ("Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process.").

35. See, e.g., *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992).

36. *Id.* at 560 (internal quotation marks omitted) (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41–42 (1976)).

The “traditional” way that litigants establish a causal connection is through “but-for causation.”³⁷ That is, “but-for an individual defendant’s emissions[,] plaintiff would not have suffered the alleged harm.”³⁸ Although scholars and the courts have pointed out that establishing but-for causation “is exceedingly difficult in the climate context,” alternative liability theories are promising for climate recovery.³⁹ Section II.B discusses how new attribution methods can be used to prove causation in future litigation.

Climate suits face many of the same attribution challenges as heavily-litigated toxic torts that established alternative causation theories.⁴⁰ For example, asbestos litigants often struggled to attribute multiple possible asbestos exposures to any one of tens of thousands of companies.⁴¹ Plaintiffs’ attorneys were forced to spend large amounts of money on discovery and extensive investigation into individual client histories and develop alternative causation theories before courts would allow recovery. Section II.C.2 discusses how insurer climate subrogation suits can use these previously developed alternative causation methods, alongside new attribution techniques, to overcome causal barriers.

iii. Redressability

Climate litigants have also struggled to overcome redressability, the final element of standing, but this is another area in which subrogation has a significant advantage.⁴² Redressability is the idea that plaintiffs must seek a remedy that a court can grant.⁴³

One major success climate litigants have had in establishing redressability (and causation) was *Massachusetts v. EPA*.⁴⁴ There, the Supreme Court held that some court-ordered mitigation of activities that produce greenhouse gases may constitute a sufficient legal remedy to climate harms.⁴⁵ The Court recognized that because greenhouse gases create a cumulative effect on the climate, even relatively small emissions reductions could lessen the harms caused by climate change.⁴⁶ And although individual plaintiffs have struggled to obtain similar remedies,⁴⁷ the redressability burden is lighter in the context of economic

37. Aisha I. Saad, *Attribution for Climate Torts*, 64 B.C. L. REV. 867, 898 (2023).

38. *Id.*

39. *Id.*

40. *Id.* at 903–07.

41. *Id.* at 906.

42. *See, e.g.,* *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992); *infra* Section II.C.3.

43. *See* *Massachusetts v. EPA*, 549 U.S. 497, 525 (2007).

44. *See generally id.*

45. *Id.* at 525 (“While it may be true that regulating motor-vehicle emissions will not by itself reverse global warming, it by no means follows that we lack jurisdiction to decide whether EPA has a duty to take steps to slow or reduce it.”).

46. *Id.* at 526 (“A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.”).

47. *See id.* at 520. Subsequent interpretations have focused primarily on the Court’s assertion that states have a “special solicitude” that differs from the interests of private environmental plaintiffs. *Id.*; *see also* *Washington Env’t Council v. Bellon*, 732 F.3d 1131, 1145

losses.⁴⁸ Courts are far more comfortable granting legal relief in the form of monetary damages than they are granting the equitable injunctions that climate plaintiffs often request.⁴⁹ Since subrogation suits are based on recovering specific economic harms in the form of a damages award—a remedy that courts often grant—they satisfy redressability from the start.

C. INSURANCE AND CLIMATE CHANGE

First-party insurers are well-positioned to bring climate change lawsuits for several reasons. First, they have the most to lose financially from the impacts of human-caused climate change. Second, they have tools to combat these losses that traditional climate plaintiffs lack. Third, through subrogation, insurers can jump hurdles to recovery that other climate plaintiffs have fought to overcome.

1. Rising Costs

Financially speaking, insurers have the most to lose from the impacts of human-caused climate change. Insurance is all about risk management, and the climate change crisis presents the greatest risk humanity has ever faced.⁵⁰ Although the first-party insurance industry has anticipated this risk, raising concerns about climate change for more than three decades,⁵¹ its risk management strategy can best be described as cutting and running.⁵² Faced with rising claims costs from climate-strengthened disasters, first-party insurers have fled markets across the United States: from flood insurance in Florida,⁵³ to fire insurance in California,⁵⁴ to a growing number of other “high-risk”

(9th Cir. 2013) (“In contrast to *Massachusetts v. EPA*, the present case neither implicates a procedural right nor involves a sovereign state. Rather, Plaintiffs are private organizations, and therefore cannot avail themselves of the ‘special solicitude’ extended to Massachusetts by the Supreme Court.”).

48. *Cf.* *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (finding standing to seek monetary damages but not injunction).

49. *Cf. id.*

50. *See* Buis, *supra* note 7.

51. Guzy, *supra* note 1, at 544 (“Beginning with the 1992 Earth Summit in Rio de Janeiro, several European-based insurers started to develop a framework for a sustainability focus for the industry that would establish a linkage between environmental and economic issues.”).

52. *See, e.g.*, Avery Ellfeldt, *‘Living with Risk’: Wildfires Fuel Insurance Worries Out West*, E&E NEWS (Dec. 23, 2022, 6:24 AM), <https://subscriber-politicopro-com.proxy.lib.uiowa.edu/article/eenews/2022/12/23/living-with-risk-wildfires-fuel-insurance-worries-out-west-00074880> (on file with the *Iowa Law Review*) (“The industry is responding to the [climate change] situation by raising premiums where it can — and pulling out of areas when the risk is too high.”).

53. Max Reyes & Daphne Zhang, *Everybody Loses as Insurers, Consumers Hit by Higher Costs*, BLOOMBERG L. (June 8, 2023, 11:54 AM), <https://www.bloomberglaw.com/document/RVY192DWRGGo> (on file with the *Iowa Law Review*).

54. Jean Eaglesham, *Home Insurers Curb New Policies in Risky Areas Nationally*, WALL ST. J. (June 8, 2023, 11:00 AM), <https://www.wsj.com/articles/home-insurers-curb-new-policies-in-risky-areas-nationally-c93abaco> (on file with the *Iowa Law Review*) (“State Farm and Allstate . . . are pulling back from California’s home-insurance market. The shift is making it hard for some home buyers to get insurance . . .”).

areas across the country.⁵⁵ But because people still need first-party insurance in these areas, the federal government has stepped in to fill the gap, displacing private sector companies of all sizes.⁵⁶ The cumulative effect of these large losses and even larger exoduses has resulted in a diminishing national market share, shrinking customer base, and dwindling profits for first-party insurance companies, governments, and individuals alike.⁵⁷

2. Tools to Minimize Losses

Insurers' primary tools to combat rising costs are raising policyholder premiums, minimizing claims payouts, exiting markets, and bringing subrogation lawsuits to recoup money paid out for policyholders' claims. This Section focuses on non-subrogation relief.

i. Raising Premiums and Minimizing Claims Payouts

In the hierarchy of cost-reduction tools for insurers, raising premiums and minimizing claims payouts are often at the top.⁵⁸ The basic structure of the insurance business is to exchange promises for payments.⁵⁹ Policyholders—consumers and businesses—pay insurers a regular fee, called a premium.⁶⁰ In exchange, the insurer promises that if the policyholder incurs a loss that their policy covers, the insurer will reimburse them for their loss (less any

55. Leslie Kaufman, *Climate Change and Insurance Are on a Collision Course*, BLOOMBERG L. (June 9, 2023, 4:00 AM), <https://www.bloomberglaw.com/document/RVZACPToAFB4> (on file with the *Iowa Law Review*) (“American International Group, Inc., which has already pulled back from new California business, is now set to curb home-insurance sales for affluent customers in around 200 ZIP codes across the US, including New York, Delaware, Florida, Colorado, Montana, Idaho and Wyoming.”).

56. See, e.g., Renée Cho, *With Climate Impacts Growing, Insurance Companies Face Big Challenges*, COLUM. CLIMATE SCH.: STATE PLANET (Nov. 3, 2022), <https://news.climate.columbia.edu/2022/11/03/with-climate-impacts-growing-insurance-companies-face-big-challenges> [<https://perma.cc/X4G3-8MD4>] (“[M]any major insurers have left Florida over the last 20 years, . . . leaving only small in-state companies with fewer resources. Six insurance companies became insolvent [in 2022], . . . and 30 more Florida insurance companies are being monitored by state regulators because their finances are shaky.”); Michael Copley, Rebecca Hersher & Nathan Rott, *How Climate Change Could Cause a Home Insurance Meltdown*, NPR (July 22, 2023, 6:00 AM), <https://www.npr.org/2023/07/22/1186540332> [<https://perma.cc/9XEC-3RRP>] (“In Florida, the state’s insurer of last resort, known as Citizens Property Insurance Corp., expected to do more business in 2023 than it did in the previous two decades, mainly due to ‘continued instability within the Florida insurance market’ following the devastating damage caused by Hurricane Ian [in 2022].”).

57. See Ellfeldt, *supra* note 52 (describing insurers pulling out of markets and dropping customers nationwide); Reyes & Zhang, *supra* note 53 (“US homeowner insurers have suffered a loss in five out of the last six years. Their combined ratio in 2022 was 104.6 [percent], meaning they’re spending more on claims than they are taking in from premiums.”).

58. Cf. MAXIMILLIAN ALFARO ET AL., FIRST ST. FOUND., THE 9TH NATIONAL RISK ASSESSMENT: THE INSURANCE ISSUE 6, 20–21, 34 (2023), <https://report.firststreet.org/9th-National-Risk-Assessment-The-Insurance-Issue.pdf> [<https://perma.cc/EHQ3-72A6>] (discussing insurers’ attempts to raise premiums and difficulty paying out claims as a result of climate change).

59. Julia Kagan, *Insurance: Definition, How It Works, and Main Types of Policies*, INVESTOPEDIA (Nov. 26, 2024), <https://www.investopedia.com/terms/i/insurance.asp> [<https://perma.cc/2LSQ-X687>].

60. *Id.*

deductible), up to specified limits.⁶¹ The insurers take on the risk that, if a loss happens, they will be responsible for covering the costs.⁶² By correctly pricing premiums and recruiting many insureds, most of whom will never require a claim payout, the insurer pools risk to achieve overall profitability.⁶³ To make a profit, insurers have an incentive to keep premiums as high as they can while minimizing the cost and likelihood of claims payouts. Maintaining profitability thus requires ensuring that every insurance claim is legitimate and that prices accurately reflect risk.

ii. Exiting Markets

A more drastic tool that insurers can use to cut costs is exiting unprofitable markets. This can mean limiting or entirely ceasing to write new policies in areas with higher risk, particularly in those lines of coverage most likely to incur claims. Of course, this comes with its own costs. Leaving a market means fewer policyholders, which means fewer premiums, less money coming in, and higher barriers to reentry once the market stabilizes.⁶⁴ If they want to remain in business, insurance companies must weigh these competing concerns when deciding whether and when to withdraw.⁶⁵

3. Subrogation

The final major tool insurers have to stay profitable is less well known but no less important: subrogation. After an insurer pays a policyholder for a covered loss, subrogation permits insurers “to step into the shoes of the insured[, assuming] the insured’s rights against a third party to prevent that party’s unjust enrichment.”⁶⁶ Through lawsuits, settlement demands, and other plaintiff-style legal maneuvering, insurance companies seek to recover from third parties who bear responsibility for damages they caused to policyholders.⁶⁷ Subrogation is based on the equitable principle that the person responsible for a loss should pay to fix it.⁶⁸

i. Types of Subrogation

Subrogation claims typically take one of three forms: equitable, contractual, or statutory.⁶⁹ Equitable, or legal subrogation, is grounded in preventing

61. *Id.*

62. *Id.*

63. *Id.*

64. *See, e.g.,* Cho, *supra* note 56.

65. Kagan, *supra* note 59.

66. Borja, *supra* note 5.

67. *Id.*

68. *Id.*

69. *Id.* Statutory subrogation comes from a right created by law and typically involves areas like workers’ compensation, un- or underinsured motorist coverage, Medicare and Medicaid claims, or Employment Retirement Income Security Act (“ERISA”) claims. *Id.* It is the least applicable to the climate context and is beyond the scope of this paper.

unjust enrichment.⁷⁰ Equitable subrogation allows a party that “paid a debt for which another is liable” to recover from the liable third party.⁷¹ Its goal is to “secur[e] the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it.”⁷²

Contractual subrogation, on the other hand, is based on a contract between parties.⁷³ An insurance contract can expand or limit the insurer’s right of subrogation, and claims can be brought under both equitable and contractual causes of action.⁷⁴ Most insurance policies specify the right to subrogate and what that right encompasses,⁷⁵ but insurers in common-law jurisdictions may bring equitable subrogation claims even absent express policy language.⁷⁶

ii. Aggregate Subrogation

One of the key features of subrogation, and what makes it a powerful tool in the climate context, is that insurers can aggregate many claims into a single legal interest. While first-party insurers commonly bring subrogation claims to recover costs for a single policyholder, insurers can also subrogate to recover claim costs from “large groups of insureds” against one or more defendants.⁷⁷ The insurer, by “step[ping] into the shoes” of the insured, becomes the real party in interest, embodying the insureds’ legal rights to vindicate a consolidated claim.⁷⁸

This single interest has important benefits. Aggregate subrogation helps streamline litigation by consolidating many smaller claims into a single litigant, sidestepping the hurdles of class actions while still allowing recovery from numerous tortfeasors that caused relatively small-dollar harms. This cumulative claim value allows insurers to leverage formidable legal weight to recover for policyholders’ widespread but relatively minor damages, including those stemming from losses in climate-exacerbated storms.

II. CLIMATE SUBROGATION IS THE ANSWER TO INSURERS’ RISING COSTS

Given increasing damage from costly climate-strengthened storms, insurers should use aggregate subrogation to slow climate change and mitigate their own risk.

70. *Id.*

71. *Id.*

72. *Id.* (quoting Preferred Pro. Ins. Co. v. Doctors Co., 419 P.3d 1020, 1023 (Colo. App. 2018)).

73. *Id.*

74. *Id.*

75. See Rice, *supra* note 4, at 68–72.

76. See Jason Reeves & José Umbert, *Climate Change and Insurance: Insurers’ Subrogation Claims*, ZELLE LLP (July 15, 2019), <https://www.jdsupra.com/legalnews/climate-change-and-insurance-insurers-69017> [<https://perma.cc/Q26S-XT89>].

77. Ben-Shahar & Logue, *supra* note 2, at 242 n.136.

78. Borja, *supra* note 5.

In the past twenty years, the United States has experienced nine of the top ten most expensive disasters in the nation's history,⁷⁹ with insured property losses totaling more than one trillion dollars in the same period.⁸⁰ Insurers have sacrificed premiums by pulling out of numerous markets, yet are still facing massive losses throughout the country.⁸¹ Scientists overwhelmingly predict that the climate crisis will only get worse in the foreseeable future, which means more and larger disasters, more frequent and expensive repairs, and ever-growing losses for insurers⁸²—all while the major emitters continue to profit.⁸³

This Part discusses the advantages insurer climate subrogation has over traditional climate litigation, arguing that climate subrogation offers a new frontier for slowing carbon emissions through the courts.

A. JURISDICTIONAL ADVANTAGES

Insurer subrogation can overcome perhaps the most common climate litigation defense tactic: delay.⁸⁴ As discussed in Section I.B.1, jurisdictional challenges, particularly removal from state to federal court, can drag out climate cases for years and even decades. Insurers could avoid these costly challenges by filing climate subrogation cases in federal court under federal diversity jurisdiction.⁸⁵

Traditional climate litigants typically prefer state courts because juries are perceived to be more receptive than judges to equitable remedies. However, insurers often prefer federal courts, both because the receptive-jury perception is less relevant when recovering economic damages, and because insurance litigation departments are commonly more well-versed in federal procedure. Since climate subrogation cases seek legal (monetary) remedies over equitable, insurer arguments are less dependent on a sympathetic jury than the arguments of traditional climate plaintiffs.⁸⁶ And because corporate defendants tend to

79. See generally ADAM SMITH, NEAL LOTT & TOM ROSS, NAT'L CTRS. FOR ENV'T INFO., NAT'L OCEANIC & ATMOSPHERIC ADMIN, U.S. BILLION-DOLLAR WEATHER & CLIMATE DISASTERS 1980–2024 (2025), <https://www.ncei.noaa.gov/access/billions/events.pdf> [<https://perma.cc/TF6E-XKGU>] (listing climate disasters in the US from 1980–2024 and their costs).

80. *Archived Tables, Estimated Insured Property Losses, U.S. Natural Catastrophes*, INS. INFO. INST., tbls. 2013–2022, 2003–2011 (2025), <https://www.iii.org/table-archive/20922> [<https://perma.cc/c/5T35-3HCQ>]; U.S. BUREAU OF LAB. STATS., *CPI Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm [<https://perma.cc/BA2L-EMFP>] (enter “1” into box labeled “\$,” set dates to convert from January 2012 to December 2022 dollars, then click “Calculate”).

81. See ALFARO ET AL., *supra* note 58, at 6.

82. See *id.*

83. Nerijus Adomaitis, *Oil and Gas Industry Earned \$4 Trillion Last Year, Says IEA Chief*, REUTERS (Feb. 14, 2023, 6:09 AM), <https://www.reuters.com/business/energy/oil-gas-industry-earned-4-trillion-last-year-says-iea-chief-2023-02-14> [<https://perma.cc/5BNL-RSC5>].

84. Hilary Beaumont, *‘Like a Dam Breaking’: Experts Hail Decision to Let US Climate Lawsuits Advance*, GUARDIAN (Apr. 25, 2023, 3:30 AM), <https://www.theguardian.com/environment/2023/apr/25/experts-hail-decision-us-climate-lawsuits-advance> [<https://perma.cc/AH5J-SE4Y>].

85. 28 U.S.C. § 1332(a).

86. *Infra* notes 139–41 and accompanying text.

prefer federal courts to state, initiating climate subrogation suits in their preferred jurisdictions could circumvent delay tactics and streamline case processes, saving valuable litigation costs. Finally, insurers could still apply state substantive law through federal diversity jurisdiction. Because aggregate subrogation helps insurers meet the amount-in-controversy requirements for diversity jurisdiction,⁸⁷ insurers would not have to sacrifice nuisance or other state-law claims to litigate in federal court.⁸⁸

B. STANDING STRONGPOINTS

Compared to traditional climate litigants, insurer subrogation suits can satisfy the injury and redressability prongs with relative ease. And although the trickiest standing prong to satisfy is causation, climate subrogation suits have advantages here too.

Subrogation suits focus primarily on monetary damages, and courts have long recognized that economic loss is a concrete and particularized injury that can be redressed by a court order.⁸⁹ Insurers bring subrogation suits to recover quantifiable monetary losses that directly result from damage to an insured's property.⁹⁰ Because part of insurers' business model is minimizing claim payouts,⁹¹ companies excel at ensuring that policyholders' claims are legitimate.⁹² Finally, unlike the plaintiffs' firms or nonprofits that have typically pursued climate change litigation, insurers have large contingents of adjusters whose job is to ensure that policyholders have suffered a covered injury in fact, minimizing allegations of frivolity.⁹³

Recently, scholars have identified hopeful developments in establishing causation through relatively new advances in climate attribution science.⁹⁴ Although causation has been one of the largest barriers to successful environmental lawsuits against fossil fuel companies,⁹⁵ climate attribution technology has been improving rapidly and plaintiffs' lawyers have not kept

87. *E.g.*, *supra* Section I.C.3.ii (describing how aggregate subrogation allows insurers to combine many causes of action into a single legal interest).

88. 28 U.S.C. § 1332(a); *Mayor of Balt. v. BP P.L.C.*, 31 F.4th 178, 204 n.7 (4th Cir. 2022) (discussing considerations for federal courts applying state substantive law).

89. *See supra* Section I.B.1; *see also, e.g.*, *Summers v. Earth Island Inst.*, 555 U.S. 488, 495–96, 499 (2009) (finding no injury in fact); *Wash. Env't Council v. Bellon*, 732 F.3d. 1131, 1141–47 (9th Cir. 2013) (finding injury in fact but not causation or redressability); *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 488–89, 515 (2008) (awarding compensatory damages for economic loss from oil spill).

90. *Borja, supra* note 5.

91. *See* text accompanying notes 62–63.

92. *PROPERTY INSURANCE LITIGATOR'S HANDBOOK, supra* note 18, at 141.

93. *Id.* at 144.

94. *See, e.g.*, *Saad, supra* note 37, at 871 (“Plaintiffs can make use of attribution methods . . . to attribute impacts such as ‘increases in ambient (surface) temperature, ocean temperature, sea level, droughts, extreme precipitation events, [and] heat waves’ to defendants on an individual and aggregate basis.” (quoting Complaint at 49, *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct. July 2, 2018))).

95. *Id.* at 896.

up with these developments.⁹⁶ A recent paper by Professor Aisha I. Saad surveyed how climate litigators used attribution methodologies in major cases dating back to 2004, arguing that new attribution methods, including “recent studies [that] attribute contributions to individual emitters,” can “overcome procedural hurdles that would advance climate tort lawsuits.”⁹⁷

Professor Saad points to several attribution studies that “model the contribution of specific emitters, including individual countries and corporations, to a range of climate events and impacts.”⁹⁸ While traditional climate litigants may not be familiar with these newer attribution techniques, insurance is a data-driven industry that has long used climate attribution models to predict risk and set premiums.⁹⁹ As a result, many insurers may already be familiar with these updated models and can utilize in-house experts to help prove causation. These new models present yet-unrealized opportunities for subrogation professionals, allowing for enhanced causation analysis that was previously unavailable. Insurers’ data-analysis strengths and previously existing understanding of such models will save time and money by removing causal roadblocks to climate change recovery.

C. ADVANTAGES OVER TRADITIONAL TORT LITIGANTS

Traditional climate lawsuits and insurance subrogation are grounded in tort law, which presents its own challenges to plaintiff recovery. But where traditional climate plaintiffs and other tort litigants face uphill battles to vindicate claims against large market players, climate subrogation again has significant benefits in overcoming these challenges. This Section discusses these advantages.

1. Judges Are Receptive to Economic Recovery Claims

Insurer climate subrogation claims are grounded in economic principles that judges tend to favor, and insurers have access to both equitable and legal bases for their claims.¹⁰⁰ Because subrogation can stem from equitable or contractual subrogation principles, climate subrogation suits could raise multiple causes of action founded on different case theories to persuade different factfinders.¹⁰¹

Equitable subrogation is partially grounded in moral concerns, so it is more likely to be persuasive to a jury.¹⁰² As a reminder, equitable subrogation rests on the principle of holding accountable the party who in “equity and good conscience” should cover a loss. This concept echoes the “polluter pays”

96. *Id.* at 868.

97. *Id.* at 879, 931.

98. *Id.* at 870 (emphasis added).

99. *See, e.g.,* ALFARO ET AL., *supra* note 58, at 18.

100. *See supra* Section I.C.3.i.

101. *See infra* note 134 and accompanying text.

102. *See supra* Section II.A.

principle that is often used in economic and climate contexts.¹⁰³ The “polluter pays” principle is an economic doctrine based on the idea that in an optimal economic system, the party that created a harm should pay to fix it.¹⁰⁴ This argument’s grounds in fairness (moral concerns) and utility (legal or logical concerns) strengthens the persuasive value no matter the factfinder.

Contractual subrogation tends to be more persuasive to judges.¹⁰⁵ Although it echoes the justice considerations of equitable subrogation, contractual subrogation claims focus more on the contractual rights and obligations of the parties. This approach is grounded more in legal concerns that tend to appeal to judicial factfinders. In climate subrogation, the combination of economic theory and contractual rights reinforces the argument that justice requires recovery from those responsible for inflicting harm. Likewise, the long history of subrogation and the availability of legal remedies help alleviate the concern that ruling in favor of a climate plaintiff would require the court to make a morality judgment best left to political branches.¹⁰⁶

2. Helpful Theories of Liability

Climate subrogation suits are well-suited to utilize established theories of liability to support recovery. When a case proceeds from procedural challenges to the merits, litigants must once again address causation by establishing that the alleged tortfeasors were legally liable for the injury they caused. This inquiry typically includes an additional question of causation that must be resolved within the particular facts of the case, rather than upon allegations in a complaint that a court presumes to be true.

Climate plaintiffs and other tort litigants argue that they deserve to recover under a variety of liability theories, all centering on the question of negligence. To succeed in a basic negligence claim, a plaintiff must establish the elements of duty, breach, legal causation, and injury creating the right to sue.¹⁰⁷ Lawyers establish this right by arguing for courts to apply the theory of liability—a legal shortcut that courts use to assess the responsibility of a potential tortfeasor—that best supports their client.

Many climate change lawsuits are brought as products liability suits¹⁰⁸—lawsuits alleging that a manufacturer or other producer negligently created

103. NICHOLAS STERN, *THE ECONOMICS OF CLIMATE CHANGE: THE STERN REVIEW* 47 (Cambridge Univ. Press 2011).

104. *Id.*

105. See *supra* text accompanying note 100.

106. Borja, *supra* note 5; STERN, *supra* note 103, at 47. This is viewed as a common shortcoming of tort litigation, which can be dependent on a sympathetic jury to vindicate plaintiffs’ rights. *But see* Neil Vidmar & Jeffrey J. Rice, *Assessments of Noneconomic Damage Awards in Medical Negligence: A Comparison of Jurors with Legal Professionals*, 78 IOWA L. REV. 883, 884, 889–90 (1993) (discussing the perception of juries as biased toward plaintiffs and arguing that statistics do not bear out such a bias).

107. RESTATEMENT (SECOND) OF TORTS § 281 (AM. L. INST. 1965).

108. Korey Silverman-Roati, *Cities, Counties, and States Score Major Procedural Win in Climate Liability Suits Against Fossil Fuel Companies*, SABIN CTR. FOR CLIMATE CHANGE L. (May 12, 2023), <https://blogs.law.columbia.edu/climatechange/2023/05/12/cities-counties-and-states-score-major>

or distributed a product that caused harm.¹⁰⁹ These causes of action are typically grounded in state nuisance or tort law, which implicates the federal jurisdictional questions discussed in Section II.A. Once plaintiffs establish negligence in products liability cases, the manufacturer or producer of the product may be held strictly liable for their product's harm, requiring compensation to the plaintiff for any injury that is attributable to their negligence. The most basic test for legal causation is but-for cause, discussed in Section I.B.2.ii, which, in the products liability context, requires a plaintiff to show that "but for the defect in the [defendant's] product, the [plaintiff's] injury would not have occurred."¹¹⁰ Typically, however, products liability plaintiffs must show factual causation, which is a slightly different inquiry.¹¹¹

Factual causation is a mixed bag for climate litigants, but one that insurer subrogation can nonetheless overcome. Factual causation is comprised of general causation, meaning that the product *could* have produced the type of injury the plaintiff suffered, and specific causation, meaning that the product in question *actually* caused the plaintiff's injury.¹¹² General causation is typically not a barrier to climate suits given the ample scientific evidence that greenhouse gas emissions can create the types of harm climate litigants allege.¹¹³

The second part of factual causation, specific causation, has created much more difficulty for climate litigants because of the fungibility of greenhouse gases.¹¹⁴ It is difficult or impossible to track individual greenhouse gas molecules from their source to the harm that they cause, and climate impacts are typically understood to result from the totality of emissions rather than the contributions of any single actor.¹¹⁵ Despite this challenge, climate plaintiffs have experienced some limited victories in establishing causation, particularly by using alternative causation theories,¹¹⁶ and the number of climate cases has soared in recent years, creating ample opportunity for new attribution science to show previously unavailable proof of causation.¹¹⁷

Of popular alternative causation theories, market share liability is the most promising for climate subrogation recovery. Market share liability is based on the idea that multiple defendants who comprise a single "market" can be held liable for a proportion of a plaintiff's injury based on their respective

or-procedural-win-in-climate-liability-suits-against-fossil-fuel-companies [https://perma.cc/RN5G-RENK].

109. MARK A. GEISTFELD, *PRINCIPLES OF PRODUCTS LIABILITY* 201 (2d ed. 2011).

110. *Id.* at 202 ("Product cases have produced [alternative and market-share liability,] one of the most interesting causal issues in tort law."); *id.* at 229.

111. *Id.* at 201.

112. *Id.* at 201–02.

113. Wuebbles et al., *supra* note 8, at 48.

114. Saad, *supra* note 37, at 911–22.

115. *Id.* at 896–97. *But see* Section II.B (discussing the potential in applying new attribution theories).

116. *See* Findings of Fact, Conclusions of Law, and Order at 102, *Held v. State*, No. CDV-2020-307 (Mont. 1st Dist. Ct. Aug. 14, 2023).

117. BURGER & TIGRE, *supra* note 16, at XIV.

shares of the market.¹¹⁸ This theory of liability arose in *Sindell v. Abbott Laboratories*, a 1980 class action in which plaintiffs alleged that while they were in utero, their mothers had taken diethylstilbesterol (“DES”) to prevent miscarriages.¹¹⁹ Investigations later revealed that DES was both ineffective and caused severe side effects for daughters exposed in utero—all of which the manufacturers knew at the time of sale.¹²⁰ Because many years passed between the litigation the exposure, however, the plaintiffs could not identify what company had created the specific pills their mothers used.¹²¹ Citing “the injustice of permitting proved wrongdoers, who among them have inflicted an injury upon the entirely innocent plaintiff, to escape liability merely because [their actions] and the resulting harm . . . made it difficult or impossible to prove which of them has caused the harm,”¹²² the court held that applying an alternative to traditional causation methods was appropriate.¹²³

This alternative causation method, which came to be known as market share liability, is based on the economic principle of the least-cost avoider. In *Sindell*, the court held that so long as the named defendants represented a “substantial share” of the DES market, the burden of proof would shift from the plaintiff to the defendants.¹²⁴ That is, once the plaintiffs established that the defendant companies’ products *could* have caused their injuries, it was up to the defendants to establish that their specific product could *not* have caused the plaintiffs’ injuries.¹²⁵ If they could not do so, each defendant would be “held liable for the proportion of the judgment represented by its share of that market.”¹²⁶

Like DES, asbestos, and other toxic chemicals, greenhouse gas emissions raise legal issues of attributability.¹²⁷ We know every greenhouse gas emission contributes to climate harm as it enters the atmosphere, but there is no way to attribute specific molecules to specific emitters. Regardless, legal norms provide methods for recovery based in manufacturer knowledge of harms¹²⁸

118. Saad, *supra* note 37, at 919–21.

119. *Sindell v. Abbott Lab’ys.*, 607 P.2d 924, 925–26 (Cal. 1980).

120. *Id.* Side effects included vaginal cancer and debilitating cervical growths that required intensive (and expensive) medical treatment. *Id.*

121. *Id.* at 926.

122. *Id.* at 929 n.11 (quoting RESTATEMENT (SECOND) OF TORTS § 433B cmt. f (AM. L. INST. 1965)).

123. *Id.* at 936–37.

124. *Id.* at 937.

125. *Id.*

126. *Id.*

127. Saad, *supra* note 37, at 911–21.

128. See, e.g., BURGER & TIGRE, *supra* note 16, at 52 (describing a 2022 report from the Philippines Commission on Human Rights of the Philippines that “acknowledged that the Carbon Majors had early awareness, notice or knowledge of their products’ adverse impacts on the environment and climate system and engaged in wilful [sic] obfuscation and obstruction to prevent meaningful climate action”).

and the potential for injustice if polluters are not held liable.¹²⁹ Market share liability's focus on divisible economic damages that were caused by the market, rather than a specific actor, makes it an especially attractive theory for climate subrogation. And because market share liability is well-established in the law, insurers need not spend time and money developing new case theories.

3. Economic Damages Encourage Courts to Grant Redress

Climate subrogation theories, like market share liability theories, focus on recovering divisible economic damages. Insurers are better positioned than typical climate litigants to overcome traditional judicial resistance to awarding damages for nebulous environmental harms, particularly where judges perceive a plaintiff to be opportunistic, undeserving, or attempting to recover improperly.¹³⁰ In contrast to the average environmental plaintiff, insurers' damages in subrogation suits are easily quantifiable because they are typically limited to claims paid to policyholders.¹³¹ But while subrogation suits do not typically seek injunctive relief, insurers' monetary damages from climate disasters are substantial enough to impact fossil fuel companies in a way that, absent a class action, traditional plaintiff damages typically cannot.¹³²

4. Limits on Recovery Support Notions of Fairness

Another justice concern that could make courts more receptive to climate subrogation is that subrogation recovery is limited only to reimbursement for a loss, rather than enrichment from damages. In 1887, the Supreme Court wrote in *Memphis & Little Rock Railroad Co. v. Dow* that the federal subrogation remedy was limited to "reimbursement for [the subrogee's] outlay in protecting the [insured] property."¹³³ The Court held that "[t]he right of subrogation . . . is a creature of equity; is enforced solely for the purpose of accomplishing the ends of substantial justice; and is independent of any contractual relations between the parties."¹³⁴ Insurance companies in most jurisdictions cannot recover punitive damages or similar monetary remedies, though they typically can recover interest on the principal balance.¹³⁵ Subrogation recovery is therefore typically limited only

129. See, e.g., *id.* at 6 ("[T]he effects of climate change are disproportionately felt across the globe and by populations in vulnerable situations, causing gender and income inequalities and development challenges, especially in the Global South and in small island developing States.").

130. See, e.g., *Metro-N. Commuter R. Co. v. Buckley*, 521 U.S. 424, 444 (1997) ("[W]e do not find sufficient support in the common law for the unqualified rule of lump-sum damages recovery . . .").

131. Borja, *supra* note 5.

132. See, e.g., ALFARO ET AL., *supra* note 58, at 25 (calculating costs). Aggregating claims allows for substantial recovery, even without the addition of damage multipliers, fines, or punitive damages that often comprise a large portion of a typical plaintiff's damages.

133. *Memphis & Little Rock R. Co. v. Dow*, 120 U.S. 287, 301–02 (1887).

134. *Id.* (recognizing subrogation rights as limited only to recovery of payments made to cover mortgage, plus interest).

135. *Id.* at 302–03. Courts differ in whether they allow a subrogee to recover attorneys' fees. See generally EDWARD A. JAEGER, JR., WHITE & WILLIAMS LLP, FIFTY-STATE COMPILATION OF

to the amount an insurer paid out to policyholders, plus interest.¹³⁶ Such a limit could circumvent arguments by emitters who seek to muddy the legal waters by arguing that subrogees (the insurers) will be unjustly enriched if a court awards damages.

Like the “equity and good conscience” doctrine, limiting recovery to reimbursement reinforces the “polluter pays” principle.¹³⁷ The goal in most subrogation suits is not a complete victory to make the insurer whole, but rather, as much as possible, to shift costs to the party or parties that caused the harm.¹³⁸ This risk shifting protects policyholders and insurers by minimizing claims and losses borne by the insurer, while simultaneously encouraging responsible third parties to internalize the external risks of their behavior.¹³⁹ These dual effects benefit insurers, markets, and society at large by focusing the negative effects of risky behavior on those, like fossil fuel producers, who choose to take such risks.

Limits on recovery in subrogation suits also support economic and equitable arguments by tying monetary damage directly to monetary loss. In tort cases, courts have been increasingly resistant to upholding large punitive damage awards, and defendants often challenge such jury awards on appeal.¹⁴⁰ Removing punitive damages as an option helps simplify cases, sidestepping allegations of unjust enrichment and leaving less room for litigious defendants to challenge an award.¹⁴¹ But where blocking punitive damages would commonly reduce the impact of many plaintiffs seeking climate redress, insurers can retain their legal leverage through aggregation of damages and suits.

5. Aggregation Ensures Impact

A key advantage of insurer subrogation over traditional tort litigation is that aggregation of claims avoids the challenges of class actions while still asserting substantial economic pressure on major corporations.

It is well established that in subrogation suits involving multiple claims, the subrogee is the real party in interest and thus can aggregate many claims against a single or multiple defendants.¹⁴² Insurers can bring numerous small-

SUBROGATION-RELATED LAWS FOR PROPERTY CLAIMS (2025), https://www.whiteandwilliams.com/assets/htmldocuments/Subro%20Charts%20Updated%205_10_16/Subro%20Chart%20Updates%202025/FIFTY-STATE%20COMPILATION%20OF%20SUBROGATION-RELATED%20LAWS%20FOR%20PROPERTY%20CLAIMS%20-%20Ver.%207%20-%20January%202025%20-%20Book%20Version.pdf [https://perma.cc/YR4M-QKGK] (surveying state subrogation laws).

136. *Dow*, 120 U.S. at 301–02 (recognizing subrogation rights as limited only to recovery of payments made to cover mortgage, plus interest).

137. *Supra* Section II.C.1.

138. Ben-Shahar & Logue, *supra* note 2, at 223–24 n.84 (“[U]nless insurers are included in the decisionmaking processes, they will have a tendency to externalize some of the costs of their decisions—the costs that are borne by first-party property insurers.”).

139. *Id.*

140. GEISTFELD, *supra* note 109, at 253.

141. *Id.*

142. *See supra* Section I.C.3.ii.

dollar claims through aggregate subrogation without needing to overcome class certification or juggle numerous plaintiffs with disparate interests.¹⁴³ A single homeowner's claim for damages following a storm is unlikely to be worth litigating against a major fossil fuel company. However, through aggregate subrogation, the insurer can bring claims that result from hundreds of homeowners who suffered damage from the same storm, substantially increasing the litigation value and the economic pressure it asserts on major emitters.¹⁴⁴ This combination of claims minimizes administrative and procedural expense, which reduces the overall cost of litigation for plaintiffs, defendants, and the courts.¹⁴⁵

III. INSURER OPPORTUNITIES IN CLIMATE SUBROGATION

The numerous advantages of climate subrogation when compared to traditional climate litigation create opportunities for addressing climate harms where existing action has been ineffective or nonexistent. But even outside of direct monetary benefits, climate subrogation suits present additional opportunities for insurers and the environment. When considering the scope of the problem that the climate crisis poses to the insurance industry, companies must do a cost-benefit analysis to properly juxtapose even modest potential subrogation gains with the massive but certain losses that will result from inaction.

This Part discusses policy reasons for why climate subrogation suits are good investments and are necessary for insurers' long-term business survival. Section III.A discusses how insurer business practices help minimize costs in pursuing climate subrogation. Section III.B describes how insurers have used subrogation in the past to recover costs after natural disasters. Section III.C touches on non-monetary benefits of climate subrogation. Finally, Section III.D argues that insurers can no longer afford to ignore climate subrogation—that they must act now to have any hope of preserving their businesses in the long term.

A. BENEFITS OF EXISTING BUSINESS PRACTICES

Insurers' regular business practice of verifying and minimizing claims payouts saves significant pre-litigation costs. Few lawyers can boast a full-time staff solely dedicated to assessing damage at the scene of a disaster, but

143. Indeed, after paying out a claim, the insurer often need not involve the policyholder at all. This is not to suggest that bringing these types of cases will be easy, only that it will be *easier* than bringing many individual claims.

144. Borja, *supra* note 5.

145. Of course, an insurer could bring a climate subrogation suit to recover damages for a single insurance claim. This could be a good strategy if, for example, a large commercial facility suffered severe and very expensive damage from a disaster made worse by climate change. It may be in their insurer's best interest to, after paying the claim, attempt to recover from the polluting tortfeasor via climate change subrogation. And even if this may not be the best type of case to test this theory on because of the relatively limited recovery potential, it certainly would be worth looking into if and when insurers establish some favorable precedent.

insurers have well-documented methods to ensure proper assessments.¹⁴⁶ As part of an insurer's regular business practice, claims adjusters verify damage claims, minimizing the need to invest in additional pre-litigation investigation.¹⁴⁷ These cost savings can be significant, particularly in cases with numerous claims that must be verified.¹⁴⁸ Since insurers can only recover up to what they have paid out to claimants and cannot profit directly from subrogation suits, it is in an insurer's best interest to minimize these claims payouts and maximize recovery.¹⁴⁹ Extensive data collection and the resulting ability to narrowly focus on the most compelling cases increases the chance that subrogation claims will be taken seriously and will result in a favorable ruling.¹⁵⁰ And because the ultimate goal of climate subrogation suits would not be complete recovery,¹⁵¹ insurers have a strong rebuttal to any unjust enrichment defense. Because of the quantifiable nature of economic harms, supported by claims adjusters' expertise in verifying this harm, climate subrogation litigators can easily overcome injury in fact and redressability to focus their time and resources on tackling—and winning—trickier parts of their cases.

Insurers can also save on pre-litigation costs by taking advantage of the large volume of research environmental activists have already completed. Researchers and activists have already identified the carbon majors—a list of potential defendants that are responsible for the lion's share of greenhouse gas emissions.¹⁵² As discussed in Section II.C.2, the fungibility of greenhouse gas emissions means that market share and other toxic tort liability strategies offer the strongest arguments for polluter liability.¹⁵³ Governments, scientists, and industry have all collected data on carbon dioxide emission levels for decades, so data on how much each entity has emitted is readily available.¹⁵⁴

Although fossil fuel companies have and will continue to argue that their emissions may not have caused the specific harm complained of, they cannot deny the well-documented levels of their greenhouse gas emissions.¹⁵⁵ Greenhouse gas fungibility could serve to narrow the scope of climate cases, because instead of arguing whether company X or Y produced the specific

146. PROPERTY INSURANCE LITIGATOR'S HANDBOOK, *supra* note 18, at 144.

147. *Id.*

148. See Paula Hannaford-Agor, *Measuring the Cost of Civil Litigation: Findings from a Survey of Trial Lawyers*, 20 VOIR DIRE 22, 25 (2013).

149. See *supra* Section I.C.2.ii.

150. See *supra* Section I.B.

151. See *supra* Section II.C.4.

152. PAUL GRIFFIN, CLIMATE ACCOUNTABILITY INST., THE CARBON MAJORS DATABASE: CDP CARBON MAJORS REPORT 7 (2017), <https://cdn.cdp.net/cdp-production/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf> [<https://perma.cc/K2P6-YYM3>] ("The fossil fuel industry and its products accounted for [ninety-one percent] of global industrial [greenhouse gases] in 2015, and about [seventy percent] of all anthropogenic [greenhouse gas] emissions.").

153. Saad, *supra* note 37, at 911–22.

154. *Id.* at 909–10.

155. See, e.g., GRIFFIN, *supra* note 152 (documenting rising emissions from humans).

emission that caused the injury,¹⁵⁶ litigants can focus on alternatives to traditional but-for causation theories, including joint and several liability, market share liability, substantial contribution, or doubling of the risk.¹⁵⁷

The combination of pre-litigation cost minimization, easily identifiable defendants with deep pockets,¹⁵⁸ enhanced attribution studies, and proven alternative liability theories should make climate subrogation an attractive strategy for cost-conscious insurers.

B. CLIMATE SUBROGATION IS WORTH THE INVESTMENT

Subrogation suits are attractive for insurers because they are good investments. “The National Association of Subrogation Professionals has reported [that subrogation is] the second largest revenue source[] for insurance companies, after premiums.”¹⁵⁹ Scholars have noted that “subrogated property insurers win statistically and significantly an overwhelming majority of negligence-based indemnification cases against utilities.”¹⁶⁰ And the small percentage of insurer subrogation suits that go to trial¹⁶¹ have a high win rate compared to regular litigation. A 2023 study by Professor Willy E. Rice found that insurers prevailed in up to two-thirds of subrogation lawsuits against utilities, as compared with only fifty-four percent of non-insurer plaintiffs who sued “other business entities.”¹⁶² These numbers suggest that the strengths of insurer verification practices translate to the courtroom, and that judges may be more likely to side with insurers than other types of plaintiffs.¹⁶³

156. Like arguments made about asbestos, DES, tobacco, or other hazardous substances before *Sindell v. Abbott Lab'ys*, 607 P.2d 924 (Cal. 1980).

157. Saad, *supra* note 37, at 911–22.

158. See, e.g., Adomaitis & Solsvik, *supra* note 83 (reporting four trillion dollars in oil and gas profits in 2022).

159. Robert McCoppin, *Insurance Company Drops Suits over Chicago-Area Flooding*, CHI. TRIB. (May 21, 2019, 3:47 PM), <https://www.chicagotribune.com/news/breaking/chi-chicago-flooding-insurance-lawsuit-20140603-story.html> (on file with the *Iowa Law Review*). While up-front costs may be high, the potential for recovery is even higher because insurers can recover costs incurred from paying out claims. See Rice, *supra* note 4, at 127.

160. Rice, *supra* note 4, at 127.

161. *Supra* note 93 and accompanying text (discussing insurer verification practices); Ashton T. Kirsch, *Befriending Your Adversary: Catching Flies With Honey*, MATTHIESEN, WICKERT & LEHRER, S.C. (Apr. 3, 2020), <https://www.mwl-law.com/subrogation-negotiations-befriending-your-adversary> [<https://perma.cc/A4DB-B2WK>] (“Less than [one percent] of all subrogation claims end up in litigation. The vast majority of claims[,] between [ninety-five percent] and [ninety-nine percent,] are resolved prior to suit being filed. Of the small number of claims that are actually litigated, somewhere between [two percent and five percent,] will actually go to trial.”).

162. Rice, *supra* note 4, at 114.

163. While insurers’ high rate of victory may be due in part to a selection bias—i.e., insurers are by nature very risk-averse and so would likely only bring suits with the highest chances of success—keep in mind that plaintiff’s lawyers commonly work on a contingency fee where they only get paid on a win or settlement. See *Fees and Expenses*, AM. BAR ASS’N. (Dec. 3, 2020), https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/working_with_lawyer/fees_and_expenses (on file with the *Iowa Law Review*) (“Lawyers and clients use this arrangement only in cases where money is being claimed—most often in cases involving

Notably, the high win rate does not account for parallel victories in mediated or settled cases where insurers may recover without the expense of obtaining a final judgement on the merits.¹⁶⁴ Consider, for example, the deadly 2017 Northern California wildfires and the 2018 Camp Fire.¹⁶⁵ Insurers paid out more than twenty-four billion dollars to cover insured losses from the fires.¹⁶⁶ Following the disasters, a group of insurance companies representing eighty-five percent of insurance subrogation claims demanded twenty billion dollars from Pacific Gas & Electric (“PG&E”) to cover fire losses resulting from PG&E’s negligence.¹⁶⁷ The companies eventually settled for eleven billion dollars (plus fifty-five million dollars in attorneys’ and other professionals’ fees)¹⁶⁸ during PG&E’s bankruptcy proceedings.¹⁶⁹ This recovery was a crucial victory for aggregate subrogation claims stemming from climate-exacerbated natural disasters because the settlement recovery essentially cut insurer losses from the fires in half.¹⁷⁰

C. DOWNSTREAM BENEFITS TO INSURERS

Beyond monetary recovery, insurers already recognize some of the benefits of climate subrogation suits and are exploring their options in this area. This Section begins by analyzing one case of insurer climate litigation before discussing indirect and non-economic benefits from climate change subrogation.

personal injury or workers’ compensation.”). Thus, their best interests are often served as well as insurers’ only by selecting the strongest cases to pursue.

164. See, e.g., Emma Newburger, *PG&E Reaches \$11 Billion Settlement Relating to Wildfire Claims*, CNBC (Sept. 13, 2019, 12:21 PM), <https://www.cnbc.com/2019/09/13/pge-reaches-11-billion-settlement-relating-to-wildfire-claims.html> [<https://perma.cc/Z22E-P528>] (describing \$11 billion subrogation recovery following the 2017 and 2018 California wildfires via a settlement).

165. Alejandra Reyes-Velarde, *California’s Camp Fire Was the Costliest Global Disaster Last Year*, *Insurance Report Shows*, L.A. TIMES (Jan. 11, 2019, 8:10 PM), <https://www.latimes.com/local/lanow/la-me-ln-camp-fire-insured-losses-20190111-story.html> [<https://perma.cc/23CJ-5878>].

166. *Id.* (“The Camp fire in Northern California was the costliest single natural disaster in the world for insurers [in 2018], resulting in \$12.5 billion in covered losses.”); Press Release, Cal. Dep’t of Ins., *California Statewide Wildfire Insurance Claims Nearly \$12 Billion* (Jan. 31, 2018), <https://www.insurance.ca.gov/0400-news/0100-press-releases/2018/release013-18.cfm> [<https://perma.cc/7ESU-JLB2>] (“Insurance Commissioner Dave Jones today announced that insurers have received nearly 45,000 insurance claims totaling more than \$11.79 billion in losses from the devastating wildfires that burned across the state in October and December 2017 . . .”).

167. Newburger, *supra* note 164.

168. PG&E Corp., Amended and Restated Restructuring Support Agreement (Ex. No. 10.22, 2019 Annual Report (Form 10-K)) 3(a)(viii)(A) (Feb. 18, 2020), <https://www.sec.gov/Archives/edgar/data/75488/000100498020000009/exhibit1022-123119.htm> [<https://perma.cc/Q2AL-8H2j>].

169. Newburger, *supra* note 164.

170. See generally Rice, *supra* note 4, at 127 (discussing statistics only for cases resolved by a final judgment).

1. Insurers Are Already Exploring Climate Subrogation

Insurers have already begun, at least indirectly, to explore their options for climate subrogation. In 2014, Farmers Insurance sued several government-run stormwater management departments in the Chicago area.¹⁷¹ Farmers brought the case as a class action, rather than a subrogation suit, on behalf of persons “whose properties were serviced by th[e] Defendant’s stormwater sewers and/or sanitary water sewer(s),” and their insurers.¹⁷² The complaint alleged that municipal governments had “failed to safely operate” stormwater and sanitary sewer systems, causing widespread property damage.¹⁷³ Farmers argued that Chicago’s “adoption of the Chicago Climate Action Plan” in 2008 meant that the cities “knew or should have known that climate change in Cook County ha[d] resulted in greater rain fall [sic] volume, . . . intensity and . . . duration” than in the past, but that city stormwater management plans relied on outdated data and resulted in widespread flooding.¹⁷⁴

Although the result was widely perceived as a loss for Farmers, many of the case’s shortcomings would be mitigated or absent by a true climate subrogation suit. Given the numerous barriers to success in the cases as filed, industry experts reacted to the Farmers lawsuits with justifiable confusion.¹⁷⁵ Less than sixty days after filing,¹⁷⁶ Farmers “abruptly withdr[ew]” its claims.¹⁷⁷ Legal experts pointed out weaknesses in the case, particularly “recent court decisions,” “the sheer size and complexity of the suit,” and state tort immunity laws, including “the public duty doctrine, which holds that governments have duties to the public at large rather than individuals.”¹⁷⁸ Farmers’ “abrupt[]”

171. Original Class Action Complaint and Demand for Jury Trial at 2–4, *Ill. Farmers Ins. Co. v. Metro. Water Reclamation Dist. of Greater Chi.*, No. 2014CH06608 (Ill. Cir. Ct. 2014); *see also* Sabin Ctr. for Climate Change L., *Ill. Farmers Ins. Co. v. Metro. Water Reclamation Dist. of Greater Chi.*, CLIMATE CHANGE LITIG. DATABASES (2025) [hereinafter Sabin Ctr., *Illinois Farmers*], <https://climatecasechart.com/case/illinois-farmers-insurance-co-v-metropolitan-water-reclamation-district-of-greater-chicago> [<https://perma.cc/2QXK-X6gY>] (listing cases against various municipalities).

172. Original Class Action Complaint and Demand for Jury Trial, *supra* note 171, at 5.

173. *Id.* at 14.

174. *Id.* at 20. Farmers did not allege that the municipal defendants had contributed to climate change, only that their failure to repair had damaged class members’ properties. *Id.*

175. *See* McCoppin, *supra* note 159.

176. Michael Bologna, *Farmers Insurance Drops Suits Targeting Illinois Towns for Stormwater Failures*, BLOOMBERG L. (June 4, 2014, 11:00 PM), https://www.bloomberglaw.com/bloomberglawnews/class-action/X8KNLK38000000?bna_news_filter=class-action#jcite (on file with the *Iowa Law Review*).

177. Akiko Shimizu & Hunter Book, *Farmers Insurance Withdraws Class Action Alleging Failure to Adapt to Climate Change*, SABIN CTR. FOR CLIMATE CHANGE L. (June 16, 2014), <https://blogs.law.columbia.edu/climatechange/2014/06/16/farmers-insurance-withdraws-class-action-alleging-failure-to-adapt-to-climate-change> [<https://perma.cc/2JH7-23U4>].

178. McCoppin, *supra* note 159. Even in its short lifespan, the defendants dealt a major procedural blow to the company by successfully removing the case to federal court under the Class Action Fairness Act. Notice of Removal at 4–5, *Ill. Farmers Ins. Co. v. Metro. Water Reclamation Dist. of Greater Chi.*, No. 14-cv-3251 (N.D. Ill. 2014); *see also* Sabin Ctr., *Illinois Farmers*, *supra* note 171 (noting removal success). Had the case continued, Farmers would likely have faced significant challenges in other areas, particularly around whether the company was an appropriate representative for the purported class members.

withdrawal raised questions about whether the company had “actually intended to pursue the[] cases or” if it intended only “to cause a stir and put local governments on notice that they may face litigation if they do not adapt to climate change.”¹⁷⁹

But the apparent loss may have been deceiving. Following their withdrawal, Farmers released a statement implying that it had accomplished some of its goals: “We believe our lawsuit brought important issues to the attention of the respective cities and counties, and that our policyholders’ interests will be protected by the local governments going forward.”¹⁸⁰ The case strategy and subsequent public statement indicated that Farmers may have been primarily seeking to bring municipalities’ attention to potential legal liability if they did not take substantive steps to reduce community climate risks. The timing of the case suggests that this strategy may have succeeded: Farmers filed its motion to dismiss on June 3, 2014,¹⁸¹ barely a month before Cook County amended the challenged stormwater management plan—for the first time in seven years.¹⁸² The subsequent infrastructure modifications accounted for climate risks and may have lowered future costs from flood damage, helping to solve an issue of critical importance to Farmers and other insurers.

2. Reputation and Regulation Benefits

Climate subrogation has other potential benefits for insurers’ reputation and resulting regulation. Because insurance is a necessary—and often legally mandated—expense for many homeowners, tenants, businesses, and individuals, it is highly regulated as a cornerstone of the American property and legal system.¹⁸³ Its importance, combined with negative public perception, means that first-party insurers in particular face tough regulatory environments.¹⁸⁴ Increasing regulatory pressure has led to rate caps and higher claims payouts,¹⁸⁵ and has increased overhead by preventing first-party insurers from cancelling or not renewing high-risk policies.¹⁸⁶

Public pressure campaigns and the media also threaten the reputation of insurers that raise premiums, painting companies as greedy corporations

179. Shimizu & Book, *supra* note 177.

180. McCoppin, *supra* note 159 (quoting Farmers spokesperson Trent Frager).

181. Sabin Ctr., *Illinois Farmers*, *supra* note 171.

182. METRO. WATER RECLAMATION DIST. OF GREATER CHI., COOK COUNTY STORMWATER MANAGEMENT PLAN P1 (2014), https://web.archive.org/web/20240128212924/https://legacy.mwr.d.org/irj/go/km/docs/documents/MWRD/internet/protecting_the_environment/Stormwater_Management/Pdfs/CCSMP/Entire_Document/CCSMP.pdf [<https://perma.cc/Z3YU-9B7F>].

183. Reyes & Zhang, *supra* note 53.

184. Eaglesham, *supra* note 54 (“[Insurers are] trying to bully their way out of oversight, . . . ‘They’re exploiting the moment to get something they’ve always wanted.’” (quoting Douglas Heller, Dir. of Ins., Consumer Fed’n of Am.)).

185. *Id.* (“A law passed by California voters . . . requires insurers to get approval from the commissioner for rate increases. Requests for hikes of more than 6.9 [percent] can go to a public hearing, which typically means a decision takes [eighteen] months or more, according to industry insiders.”).

186. *Id.* (describing insurers pulling out of two hundred zip codes nationwide).

“trying to bully their way out of oversight,” rather than reasonable businesses accounting for higher costs.¹⁸⁷ As disaster claims become more expensive and first-party insurers struggle to stay afloat,¹⁸⁸ companies’ go-to methods of passing costs on to policyholders through raising premiums and minimizing coverage are further worsening insurers’ reputations.¹⁸⁹ Consumer displeasure has increased pressure on elected officials to limit premiums and crack down on executive bonuses and other practices that consumers view as insurance excesses.¹⁹⁰ These regulations have impacted company profits,¹⁹¹ indicating that business as usual is no longer working.

If publicized, climate subrogation suits could generate positive public perception of insurers, which could translate into increased political influence. For example, pressure on first-party insurers is particularly strong in California, where laws require insurance companies to obtain approval from state officials for every rate increase on residential properties.¹⁹² Insurers have been pleading with lawmakers to allow rate growth to match the skyrocketing costs of increasingly expensive disasters.¹⁹³ They have argued that “regulatory curbs on pricing mean [insurers] can’t recoup an inflation-driven surge in rebuilding costs, as well as rising losses from wildfires.”¹⁹⁴ Data support these claims, with insurers reporting that “[o]f the 17,147 projected average annual properties destroyed in [2023], 38.8 [percent], or 6,654 of them, are anticipated to come from California alone.”¹⁹⁵ And while California’s regulatory framework may be especially stringent, insurers nonetheless are experiencing record losses and similar regulatory pushback nationwide.¹⁹⁶ Despite documented losses, consumer groups have consistently opposed premium increases, arguing that insurers are misleading the public and not doing enough to cut costs.¹⁹⁷

187. *Id.* (quoting Douglas Heller, Dir. of Ins., Consumer Fed’n of America).

188. *See, e.g.*, Cho, *supra* note 56 (“[M]any major insurers have left Florida over the last [twenty] years, . . . leaving only small in-state companies with fewer resources. Six insurance companies became insolvent [in 2022], . . . and [thirty] more Florida insurance companies are being monitored by state regulators because their finances are shaky.”).

189. *See* PROPERTY INSURANCE LITIGATOR’S HANDBOOK, *supra* note 18, at 7 (discussing media focus on bad news).

190. *See, e.g.*, Lawrence Mower, *Florida Report on Insurance Failure Raises More Questions than Answers*, TAMPA BAY TIMES (Aug. 23, 2023), <https://www.tampabay.com/news/florida-politics/2023/08/23/property-homeowners-insurance-sawgrass-insolvent-patronis-regulators> [<https://perma.cc/8J7X-UPZP>] (“Past insolvency reports have repeatedly uncovered insurance executives reaping big paydays as their companies failed.”); Eaglesham, *supra* note 54.

191. *See, e.g.*, Cho, *supra* note 56.

192. CAL INS. CODE §§ 1861.01–1861.16 (West 2013) (codifying Proposition 103).

193. Eaglesham, *supra* note 54.

194. *Id.*

195. ALFARO ET AL., *supra* note 58, at 18.

196. *See, e.g.*, Eaglesham, *supra* note 54.

197. Harvey Rosenfield, *Allstate’s \$16M Homeowners Rate Hike Approved Despite Company Secretly Ending Sales of New Home Insurance in California*, CONSUMER WATCHDOG (June 13, 2023), <https://consumerwatchdog.org/insurance/allstates-16m-homeowners-rate-hike-approved-despite-company-secretly-ending-sales-of-new-home-insurance-in-california> [<https://perma.cc/J2K3-CTP2>] (misleading the public); Carmen Balber, *Lara’s Deal with Insurance Industry Does Nothing for*

Climate subrogation suits could assuage these consumer concerns, help insurers boost their reputation, and lessen regulatory pressure. A 2023 Pew Research Center survey found that “[t]wo-thirds of [American] adults say large businesses and corporations are doing too little to reduce the effects of climate change.”¹⁹⁸ Studies have increasingly shown that “financially successful companies that integrate environmental, social, and corporate governance (ESG) priorities into their growth strategies outperform their peers,” as long as their underlying business practices are solid.¹⁹⁹ By drawing public attention to subrogation suits against the biggest polluters, insurers could help bring the economic harms of climate change front and center.

Refocusing the public attention to how insurers are fighting climate change could also lessen consumer and regulatory pressure. Statistics show that consumers and markets are willing to bear higher out of pocket costs when they understand and appreciate the reasons behind an increase.²⁰⁰ If consumers could see the enormous economic pressures insurers face and the steps that companies are taking to mitigate widespread harms, they might be more understanding about higher premiums—or, at the very least, would realize that their higher costs come as a direct result of continued greenhouse gas emissions.²⁰¹ Holding major emitters accountable would be a tangible example of companies acting to keep premiums from increasing more. Framed as a direct action against the major parties responsible for the climate crisis, climate subrogation would be more readily understandable by a wider audience than technical changes in insurance policies to better address risk.

Consumers and Does Not Address Climate Change, CONSUMER WATCHDOG (Sept. 26, 2023), <https://consumerwatchdog.org/insurance/paras-deal-with-insurance-industry-does-nothing-for-consumer-s-and-does-not-address-climate-change> [<https://perma.cc/P8UH-ECHF>] (not cutting costs).

198. Alec Tyson, Cary Funk & Brian Kennedy, *What the Data Says About Americans' Views of Climate Change*, PEW RSCH. CTR. (Aug. 9, 2023), <https://www.pewresearch.org/short-reads/2023/08/09/what-the-data-says-about-americans-views-of-climate-change> [<https://perma.cc/XR57-C8YS>]. Only twenty-one percent of people responded that businesses were “doing about the right amount,” while only ten percent thought businesses were doing “too much.” *Id.*; see also Matthew Daly & Nuha Dolby, *Most in US Want More Action on Climate Change: AP-NORC Poll*, ASSOCIATED PRESS (Oct. 25, 2022, 4:47 PM), <https://apnews.com/article/inflation-biden-technology-trending-news-government-and-politics-e734337636b6dba18840649e3c9db73b> [<https://perma.cc/U4BJ-USKP>] (“A majority of Americans, 62 [percent], say companies’ refusal to reduce energy use is a major problem for efforts to reduce climate change, while just about half say people not willing to reduce their energy use is a major problem.”).

199. Rebecca Doherty, Claudia Kampel, Anna Koivuniemi, Lucy Pérez & Werner Rehm, *The Triple Play: Growth, Profit, and Sustainability*, MCKINSEY & CO. (Aug. 9, 2023), <https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/the-triple-play-growth-profit-and-sustainability> [<https://perma.cc/UYN2-C2UM>].

200. Utpal M. Dholakia, *If You’re Going to Raise Prices, Tell Customers Why*, HARV. BUS. REV. (June 29, 2021), <https://hbr.org/2021/06/if-youre-going-to-raise-prices-tell-customers-why> (on file with the *Iowa Law Review*).

201. See, e.g., *id.* (using market research to argue that companies are best served by transparency in price increases).

3. Compounding Benefits

In addition to reputational strengthening, climate change subrogation has compounding long-term benefits for insurers because it could create both judicial precedent and reusable case strategies. While the first attempts at bringing climate subrogation suits will likely be the most challenging, they have the advantage of setting future precedent and creating case models that can be duplicated with lower start-up costs. In initial cases, the fear of creating precedent will increase pressure on wealthy defendants to settle early.²⁰² As in the PG&E case,²⁰³ settlement creates a short-term advantage by allowing recovery for major harms without the time and expense of a trial.

In the long term, however, insurers would be best served by pursuing especially strong cases to set judicial precedent. This is, of course, a gamble—as is any litigation. But there are many reasons for insurers to be confident that they can prevail,²⁰⁴ and in this area, the large number of claims and disasters works in the insurer’s favor because the large volume of claims allows the insurer to select only those cases most worth pursuing. A company can start small and focus on developing legal arguments in test cases that they hope to settle before diving into the challenge of obtaining a final merits judgment.²⁰⁵

4. Encouraging Risk Internalization

Beyond the judicial precedent-setting advantage, climate subrogation suits bring a new avenue of pressure for polluters to reduce their emissions. Despite numerous attempts, the largest emitters have so far avoided significant legal consequences for their role in creating the climate crisis.²⁰⁶ Yet scholars have noted that it is only a matter of time before such lawsuits are successful, especially as the adverse effects of climate change continue to increase.²⁰⁷ Climate subrogation suits would present a massive financial and legal challenge to large-scale polluters, who could no longer rely on outwaiting and outspending their opponents.²⁰⁸ And insurers would be serving their own

202. See, e.g., Kirsch, *supra* note 161 (“Less than [one percent] of all subrogation claims end up in litigation. The vast majority of claims between [ninety-five percent] and [ninety-nine percent] are resolved prior to suit being filed. Of the small number of claims that are actually litigated, somewhere between [two to five percent] will actually go to trial.”).

203. *Supra* Section III.B (PG&E case).

204. See, e.g., Rice, *supra* note 4, at 114 (documenting high success rates for subrogation against utilities).

205. Of course, even if they are expecting a case to settle, it goes without saying that any lawyer should be prepared to bring their case to the merits if necessary.

206. Reeves & Umbert, *supra* note 76.

207. *Id.* (“[I]t is likely that one of the lawsuits against the carbon majors or other large emitters will, eventually, succeed.”).

208. See, e.g., *Mayor of Balt. v. BP P.L.C.*, 31 F.4th 178, 194–95 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 1795 (2023) (describing extensive record); Sabin Ctr. for Climate Change L., *supra* note 17; see also *supra* notes 16–19 and accompanying text.

interests by encouraging large economic players to internalize their externalities—externalities that hit first-party insurers particularly hard.²⁰⁹

Public perception could also help policyholders internalize their climate risks by directly connecting premium costs to climate recovery. Insurers could use any increase in media coverage to draw attention to the unique challenges they face from the rising cost of climate change.²¹⁰ Much like auto insurers have been successful in connecting safe driving habits to premium rates,²¹¹ such transparency could directly connect policyholders' perception of climate harms to their own pockets.

5. Profit Maximization

Insurers can use the advantages of positive public perception and the threat of monetary losses from the climate crisis to convince investors of the necessity of climate subrogation. For insurance companies, climate subrogation suits are primarily a means to maintain financial solvency, rather than an action taken out of pure goodwill. While some investors may be uncomfortable with climate lawsuits that they perceive as a political statement, insurers have an easy answer to those concerns: They are doing everything in their power to stay profitable. In Florida, at least six insurers were declared insolvent in 2022 alone.²¹² Business as usual works only when circumstances remain unchanged, and companies that fail to confront the climate crisis will likewise fail their shareholders and their own bottom lines. Insurers that can successfully frame climate subrogation suits as a crucial money-making opportunity could see their public profile rise. And consider the counterfactual: If insurers ignore climate subrogation while their profits continue to plummet, they could lose their businesses entirely. If that happened, the immense pushback from investors, which would include lawsuits against insurance companies and executives themselves, would certainly dwarf any concerns investors might have about a company's perceived advocacy role.

D. INSURERS CANNOT AFFORD TO IGNORE CLIMATE SUBROGATION

The question insurers and the world must ask is not whether the climate will worsen, but rather by how much.²¹³ For insurance companies in particular, how much it will worsen can be measured almost directly in terms of increased expense.²¹⁴

209. See ALFARO ET AL., *supra* note 58, at 6.

210. A slogan could be: "We want to make sure our policyholders can rebuild, repair, and recover—both now and in the future."

211. Miremad Soleymanian, Charles B. Weinberg & Ting Zhu, *Sensor Data and Behavioral Tracking: Does Usage-Based Auto Insurance Benefit Drivers?*, 38 MKTG. SCI. 21, 40 (2019) (on file with the Iowa Law Review).

212. CBS Mia. Team, *Sixth Florida Property Insurer Declared Insolvent*, CBS NEWS (Sept. 26, 2022, 10:33 AM), <https://www.cbsnews.com/miami/news/sixth-florida-property-insurer-declared-insolvent> [<https://perma.cc/H2JD-UZEN>].

213. Buis, *supra* note 7.

214. See, e.g., Reyes-Velarde, *supra* note 165.

In 2022, the National Association of Insurance Commissioners reported that “[t]he homeowners line [of insurance in the United States] has been unprofitable for three consecutive years and five of the last ten,” with “natural disasters cost[ing] insurers roughly \$90 billion” in 2022 alone.²¹⁵ These immense costs, which will only rise as climate impacts worsen, mean that property and casualty insurers cannot continue to ignore the significant opportunities climate subrogation offers if they want to preserve their bottom line.

Insurers are dealing with numerous threats to their business models from state and federal governments. Coupled with strict regulatory regimes in places like California is the encroachment of federal and state government insurers into the private market, particularly in flood insurance.²¹⁶ The National Flood Insurance Program (“NFIP”) heavily subsidizes its flood insurance premiums, keeping prices artificially low and effectively precluding private sector competition.²¹⁷ As a result, NFIP policies were estimated to comprise more than ninety percent of all flood insurance policies in the United States in 2018.²¹⁸ Combined with regulatory limits on raising prices, many insurers have left markets or chosen not to enter based on fears of becoming trapped in unprofitable price structures.²¹⁹ These concurrent pressures and insurers’ reactions to them demonstrate a dwindling market share that, over time, could threaten to unbalance the economies of scale built by the most profitable companies.

To preserve their dominance in an increasingly threatened market, insurers must think critically about their long-term stability and risk. Some insurers may be averse to climate subrogation because of their investments in fossil fuels, but such investments cannot provide long-term security.²²⁰ As the world moves toward decarbonization, fossil fuel investments have become

215. BRIAN BRIGGS, TOPHER HUGHES & SHELBY MILLIGAN, NAT’L ASS’N OF INS. COMM’RS, U.S. PROPERTY & CASUALTY AND TITLE INSURANCE INDUSTRIES – 2022 FULL YEAR RESULTS 6 (2023), <https://content.naic.org/sites/default/files/inline-files/2022%20Annual%20Property%20%26%20Casualty%20%26%20Title%20Insurance%20Industries%20Analysis%20Report.pdf> [https://perma.cc/AA3M-DE8W].

216. See CAROLYN KOUSKY, HOWARD KUNREUTHER, BRETT LINGLE & LEONARD SHABMAN, WHARTON RISK MGMT. & DECISION PROCESSES CTR., THE EMERGING PRIVATE RESIDENTIAL FLOOD INSURANCE MARKET IN THE UNITED STATES 1–3 (2018), <https://esg.wharton.upenn.edu/wp-content/uploads/2023/07/Emerging-Flood-Insurance-Market-Report.pdf> [https://perma.cc/NU62-VGGP].

217. *Id.* at 21–22, 42–43.

218. *Id.* at 13.

219. *Id.* at 36. After Florida deregulated premium rates for residential flood insurance to encourage private flood insurance growth in 2014, at least one small property insurer cited “the freedom to set and change rates [as] influential in the company’s decision to enter the admitted [state government reinsured] market.” *Id.*

220. See, e.g., Brianna Sacks, *Lawmakers Launch Probe of Insurance Firms’ Funding of Fossil Fuel Industry*, WASH. POST (June 9, 2023, 5:04 PM), <https://www.washingtonpost.com/climate-environment/2023/06/09/investigation-insurance-companies-fossil-fuels> (on file with the *Iowa Law Review*) (describing a Senate investigation into seven major insurers that “continu[e] to insure and invest billions of dollars in fossil fuel projects” while “scal[ing] back coverage in disaster-prone states because climate risks have become too costly”).

increasingly less profitable.²²¹ Indeed, for the past decade, “[f]ossil fuel stocks have dragged down stock market returns,” even when accounting for short-term profits from energy crises during this period.²²² Nonetheless, many insurance companies invest heavily in fossil fuels, and more aggressive subrogation tactics may mean insurers lose out on short-term oil and gas profits when they arise.²²³ These short-term and decreasing profits are no substitute for long-term financial and environmental sustainability, which benefits both insurers and society at large. Given the danger that climate change presents to the industry and the potentially significant benefits of climate subrogation, insurers must reevaluate the long-term business impacts of climate inaction and embrace new ideas to protect their own futures.

Insurers’ current business model of withdrawing from markets is unsustainable for the climate, for residents left behind, and for companies themselves. While State Farm and other companies that have exited California, Florida, and other markets may have saved money on claims payouts, any market withdrawal guarantees only one thing: loss of premiums. Even with higher claims costs and regulatory price ceilings,²²⁴ the companies that have pulled out of the California market altogether have lost out on writing new premiums for the millions of homeowners in the state.²²⁵ The money insurers forfeit from these withdrawals can be substantial—for example, in 2022, the California market comprised more than sixteen percent of State Farm’s total earned premiums for the year.²²⁶ As exits increase nationwide, insurers are collecting less from homeowners across the country, further threatening their underlying business.

These short-term strategies ignore inevitable and obvious risk. Like fossil fuel investments, exiting unprofitable markets may be a good short-term solution for maintaining profits. But also like fossil fuel investments, widespread market exits are untenable as a long-term business model. While some experts have insisted that companies are simply following market

221. CONNOR CHUNG & DAN COHN, INST. FOR ENERGY ECON. & FIN. ANALYSIS, PASSIVE INVESTING IN A WARMING WORLD 5 (2024), https://ieefa.org/sites/default/files/2024-02/Passive%20Investing%20in%20a%20Warming%20World_February%202024.pdf [<https://perma.cc/8D5D-S2KH>].

222. Connor Chung & Dan Cohn, *Financial Rationale for Investing in Fossil Fuel Industry Continues to Unravel*, INST. FOR ENERGY ECON. & FIN. ANALYSIS (Feb. 8, 2024), <https://ieefa.org/articles/financial-rationale-investing-fossil-fuel-industry-continues-unravel> [<https://perma.cc/gSP T-KJY7>].

223. See, e.g., Sacks, *supra* note 220 (describing a Senate investigation into seven major insurers that “continu[e] to insure and invest billions of dollars in fossil fuel projects” while “scal[ing] back coverage in disaster-prone states because climate risks have become too costly”).

224. *Supra* Section III.C.2.

225. Eaglesham, *supra* note 54.

226. CAL. DEP’T OF INS., 2022 CALIFORNIA PROPERTY AND CASUALTY MARKET SHARE REPORT 5 (2023), <https://www.insurance.ca.gov/01-consumers/120-company/04-mrktshare/2022/upload/Top25grps2022.pdf> [<https://perma.cc/L89R-2BJW>]; STATE FARM, 2022 ANNUAL REPORT TO STATE FARM MUTUAL POLICYHOLDERS 1 (2023), <https://www.statefarm.com/content/dam/sf-library/en-us/secure/legacy/pdf/2022-annual-report.pdf> [<https://perma.cc/Y6UD-4XKD>].

fluctuations and will return in the long run,²²⁷ scientific projections indicate that climate change is increasing the danger and expense of disasters, promising that they will be both more extreme and more common in the near future.²²⁸ More disasters means more risk, larger claims payouts, and ever-increasing losses.²²⁹ But while insurers are losing big in some jurisdictions, most companies still enjoy large profits overall, meaning they have the resources necessary to pursue climate-focused litigation.²³⁰ With rising costs, caps on companies' abilities to raise rates or cancel unprofitable policies, and large market exoduses,²³¹ profits are trending downward—meaning that insurers must act now before it is too late.²³² Faced with numerous barriers to covering their ever-increasing losses, insurers can no longer afford to ignore climate subrogation.

CONCLUSION

Human-caused climate change is an intractable problem that demands innovative solutions from every corner of the market. Insurers have a unique opportunity to overcome traditional climate litigation hurdles through subrogation, and they should use this opportunity to protect themselves and the rest of humanity. Insurers can keep retreating from markets and drawing down their economies of scale until they inevitably collapse, or they can use their second largest source of revenue to hold major emitters responsible for the damage these emitters have caused to insureds and the environment. If insurers succeed in climate subrogation suits—and the evidence suggests that they will—they could take credit for helping to save the planet through actions that maximize profits, shareholder value, and long-term stability. Climate change is an existential crisis, but it is one we can still slow and stop if we move quickly. Insurers must adapt and act now if they want to survive.

227. See Eaglesham, *supra* note 54 (quoting California Insurance Commissioner Ricardo Lara's argument that companies are simply following "wildfires and market changes" and that "insurers in the past have paused and restarted writing policies" in the state).

228. Buis, *supra* note 7.

229. ALFARO ET AL., *supra* note 58, at 21–22.

230. See, e.g., BRIGGS ET AL., *supra* note 215, at 6 ("Despite the unfavorable underwriting results, the industry still recorded a profit of \$34.0 billion in the first half of 2022 due to [an] increase in investment gains.").

231. Reyes & Zhang, *supra* note 53.

232. Eaglesham, *supra* note 54 ("With inflation so high, insurers don't have much profit padding to carry them through a market where they're taking short-term losses," said Amy Bach, executive director at the consumer-advocacy group United Policyholders.").