

## Attorneys React To The Paris Climate Change Deal

*Law360, New York (December 14, 2015, 8:16 PM ET)* -- Nearly 200 countries reached a historic agreement in Paris over the weekend to limit greenhouse gas emissions in hopes of curbing global warming. Here, attorneys tell Law360 what they see as the takeaways from the landmark accord.

### **James Bacchus, Greenberg Traurig LLP**

“After nearly three decades of trying, the new global climate agreement is only a start toward truly confronting climate change. But it is, at long last, a real start. The Paris agreement creates a basic framework on which the world can now begin to build, bottom-up, with a multitude of innovative and market-driven approaches worldwide that, over time, can be enhanced and upheld through the international rule of law.”

### **Robert N. Berg, Michelman & Robinson LLP**

“The goals of the Paris Climate Accord are noble, indeed, and may go a long way toward protecting the global environment. However, in addition to enforcement issues, the accord likely will produce a host of new and unknown problems — ranging from basic contractual rights, to disputes that are international in scope. For example, how will promises under the accord to minimize deforestation affect existing long term logging agreements? Further, what governmental agencies will need to be established to assist with funding environmental compliance programs, and with enforcement of new regulations? These issues will require innovative solutions from the legal community.”

### **Timothy J. Bergere, Montgomery McCracken Walker & Rhoads LLP**

“The Paris Accord sets aggressive, though primarily voluntary and aspirational goals for 200 countries to work cooperatively toward the goal of a low-carbon world. Its approval by the minimum required 55 nations will be a political football over the coming years. The larger industrialized nations have been asked to put their money where their mouths are, by contributing hundreds of billions of dollars over the coming years to poorer nations, to develop low carbon economies. If the funding commitments are not met, and if the developed nations do not export their technological developments to developing countries, the developing nations will continue to utilize low cost carbon fuel sources to drive their economies. The Accord will provide the greatest benefits to the developing economies of third world countries, who will benefit from financial and technological contributions from developed nations. Reducing the carbon emissions toward achieving a ‘net zero’ goal is only half of the control equation. The other half is to curb, indeed, reverse deforestation and land development, because trees and

vegetation are carbon 'sinks' which remove carbon from the atmosphere. The current accord recognizes the importance of both efforts. A number of the developed nations undoubtedly will demonstrate attainment of carbon emission goals by taking credit for re-forestation or other land preservation efforts. It will be a challenge for developed nations to develop carbon sequestration technologies to help off-set carbon emissions from industrial and agricultural sources."

**Wray Blattner, Thompson Hine LLP**

"Over 190 countries have signed on to an agreement that sets aggressive targets for GHG emissions limits. However, the hill that is to be climbed to achieve the lofty goals is a steep one. The agreed upon plans are not legally enforceable. Legislatures may decline to ratify the pact. Political winds may shift and nations' pledges withdrawn. Second, the total commitments pledged in Paris will not produce the emissions reductions believed to be necessary to achieve the over-arching goal, expressed at the outset of the conference, of limiting global warming to a 2 degree Celsius increase over pre-industrial age levels. In addition, the Paris Climate Agreement will require a significant shift from fossil fuels to renewable energy and probably development of feasible, commercial scale emissions capture and control systems for coal-fired power plants. The fact is that the costs of renewable energy on a grand scale are prohibitive today, and no economically or technologically feasible commercial scale 'carbon capture and sequestration' systems exist today."

**Harold Blinderman, Day Pitney LLP**

"This is not the culmination but the continuation of the Obama Administration's aggressive efforts to significantly reduce greenhouse gas emissions. The Paris Climate Change Agreement will undoubtedly accelerate the pace of the transition — both in the U.S. and internationally — to a low carbon economy. However — a word of caution — just as the Obama Administration GHG efforts have been challenged every step of the way up to now, they will continue to be challenged regardless of the accords as well as the Obama Administration's authority to enter into the agreement without U.S. Senate approval."

**J. Wylie Donald, McCarter & English LLP**

"A non-binding accord that will halt the planet's headlong rush into climatic purgatory? Really? Yes, and I'm hopeful; here's why. The take-away for the investment community is that the costs of carbon will increase. Whether this comes from a resurrected carbon tax, or command and control like the Clean Power Plan — which has resulted in coal plant shutdowns, even as it is challenged in the courts — or consumer preference — as evidenced by the free fall of solar power prices — if the cost of carbon goes up, the relative cost of non-carbon goes down. Investment, and our future society, changes accordingly."

**R. Morgan Gilhuly, Barg Coffin Lewis & Trapp LLP**

"The Paris agreement is historic, first, because it represents a rebound from the failed Copenhagen conference in 2009 and, second, because of its broad scope, bringing more than 195 countries into accord. Everyone acknowledges that the measures that the participants have adopted will not be enough to limit temperature increases to the two-degree Celsius target, but the accord will have a significant and likely increasing effect as participating governments ratchet up incentives and in some

cases mandates for industry to reduce carbon emissions. The accord will help to redirect the engine of capitalism toward a lower carbon future.”

**Pamela S. Goodwin, Saul Ewing LLP**

“Two hundred countries reaching an agreement on any topic is historic. The commitment is to strive to reach a common goal by individual planning and the obligation of each nation to periodically report back. Many nations may be tempted to pay lip service to simple solutions. Planning and implementation will require working within our existing infrastructure and energy distribution systems and their reliance upon fossil fuels, while reducing their carbon input by ensuring that they are regulated and operated to minimize their impact, as the world’s nations and their scientists make their plans for the future.”

**Maureen Gorsen, Alston & Bird LLP**

“For businesses in jurisdictions just starting down the carbon reduction path as a result of the Paris climate accord, a key first step will be establishing the baseline of carbon emissions from their facilities and operations from which the reductions will be required. From this baseline, each business will then be able to evaluate their menu of options on the carbon diet and determine how best to choose to minimize impacts on their business or find new revenue generating opportunities. It will also be important to monitor each jurisdiction’s implementation plans to ensure they keep feasible options on the menu.”

**Peter Gray, Dentons**

“With the ink on the global climate change agreement barely dry, skeptics are already questioning its value because key provisions are non-binding, such as each nation’s pledge to reduce greenhouse gas emissions in accordance with an ‘Intended Nationally Determined Contribution.’ There is no mechanism to enforce a country’s INDC. Instead, the agreement requires countries to publicly report their emissions reductions and their progress in achieving their INDCs. Skeptics question whether public disclosure would lead a nation to comply with its pledge, but it has worked on a smaller scale in an analogous environmental regime: the ‘Toxic Release Inventory.’ That law requires companies to annually report the amount of listed ‘toxic chemicals’ they release into the environment. The adverse publicity associated with disclosing large releases led to reduced use of many listed chemicals. A similar narrative may play out on the global stage as nations seek to avoid being perceived as climate scofflaws.”

**Kevin Holewinski, Jones Day**

"The agreement is significant in that undeveloped countries now are committed to reductions. The fact that the issue of ‘loss or damage’ does not provide a basis for ‘compensation’ is also important. But the agreement really is not ‘binding’ in the sense a treaty would be. Thus, the agreement has promise but is not a guarantee that the reductions will abate climate change."

**Jonathan Martel, Arnold & Porter LLP**

“The Paris agreement is remarkable for the consensus it represents regarding the challenge and at least an aspirational commitment to address it. Internationally, there is much that remains to be done to

ensure a workable path to implement GHG controls commensurate with these aspirations. Domestically in the U.S., the agreement creates a substantial counterweight to a Congressional reflex to resist calls for action; lends additional weight to the EPA's upcoming mid-course review of automobile standards for Model Years 2022-2025; adds to the 'no Plan B' atmosphere in Clean Power Plan litigation; and adds another element to challenges facing energy dependent business in planning long-term strategy."

**Peter J. McGrath Jr., Moore & Van Allen PLLC**

"There are several takeaways. First, this accord must be seen as a step in, not the end of, the process. The requirements are in many cases vague or aspirational. Interested parties must be vigilant in implementing the accord, so that the deal does not go the way of the Kyoto accords. But this is nonetheless a major achievement and milestone. All the world's most significant economies — including China and the US, Iran and Venezuela — have agreed to take steps to limit or plateau emissions, and to reach climate change goals. In addition, this accord has sent signals — to which world markets are already paying attention — that governments will be turning policies away from fossil fuels and toward renewables."

**Jim McTarnaghan, Perkins Coie LLP**

"The Paris Climate Pact reflects significant success in the global effort to curb global warming and reduce carbon emissions. For the United States, the EPA's Clean Power Plan already requires state-by-state reductions leading to carbon dioxide emissions from the electric power sector to 32 percent below 2005 levels by 2030 and will be an important compliance effort by the U.S. with the Paris agreement. A key political and legal question moving forward is whether the Paris agreement, already controversial in Congress, will bolster the EPA's position on the CPP in court or add further fuel to the opposition."

**Adam Riedel, Manatt Phelps & Phillips LLP**

"The Paris agreement is a historic agreement in that, for the first time, all parties to the agreement are required to take some level of action to reduce their greenhouse gas emissions. The distinctions between the obligations of developed and developing countries that hampered previous attempts at an international agreement have been discarded, resulting in a truly global agreement. Although the final agreement does not set legally binding emission reduction targets, it represents a formal commitment by the international community to collectively reduce global greenhouse gas emissions, which is a significant development."

**Daniel Riesel, Sive Paget & Riesel PC**

"The deal will be viewed as either a glass half-filled or half empty depending on the viewers' pre-Paris perspective. Momentum from the agreement will exert pressure to generate new legislative and administrative efforts to reduce carbon emission. However, while the prospects of dramatic new regulatory action in the U.S. are not probable, the accord will alter perspective. It is likely to minimize bedrock principles of global warming deniers, step-up pressure on legislators to take some action supporting environmental changes, and impact pending litigation. Expect to see a great deal of activity for environmental and energy lawyers going forward."

**Eric Rothenberg, O'Melveny & Myers LLP**

“The delegates to the successful Paris accord are now headed home with the task of developing plans to assure INDCs in advance of the first 2020 compliance date. In the U.S., the Clean Power Plan is the current centerpiece for GHG reductions between now and 2030, but it may be that new emphasis can be given to less controversial programs like renewable energy and forest conservation. Deforestation accounts for 25 percent of global climate change — conservation efforts, and curbing both deforestation and forest degradation through sustainable management, could make a huge impact. Hopefully the positive spirit from Paris will foster innovation.”

**Rick Saines, Baker & McKenzie LLP**

“It is hard to truly appreciate the significance of the Paris Agreement, as the moment is still fresh and when the dust settles, the hard work of implementing the agreement on the ground will begin. Having said that, Paris may be the most significant and meaningful COP since the adoption of the UN Framework Convention on Climate Change. The governments of the world have spoken with clarity and conviction that the world economy is heading rapidly toward de-carbonization. The train has left the station with everyone on board. This will have profound impacts on global commerce for decades to come.”

**Melanie Shanker, Linklaters LLP**

“Two key features will galvanize the long-term impact of the Paris agreement: the creation of a framework for transparent emissions reporting using common metrics and a 5-year review and ratchet to increase ambition. It is likely that impacts will not be felt by businesses overnight, but rather, over time as domestic energy policies are implemented to ensure countries can deliver on their national emission reduction commitments and continue to ratchet up ambition in accordance with the Paris Agreement. The agreed level of ambition is unexpectedly ambitious, with parties agreeing to hold the world to well below two degrees Celsius of global warming, and to pursue efforts to limiting warming to one and a half degrees Celsius, the figure accepted as being necessary to prevent the most extreme impacts of climate change.”

**Jennifer Smokelin, Reed Smith LLP**

“I was a delegate at COP21 on behalf of the International Emission Trading Association, and I was also a delegate at the COP15 in Copenhagen. It strikes that what came to fruition in Paris germinated from the seeds planted by the Copenhagen Accord. That accord — which was brokered directly by President Obama and the leaders of key developing countries — led the way for the INDCs that make these meetings possible. So, in hindsight, I think people should no longer speak of Copenhagen as a ‘failure’ and recognize it as a necessary building block to success in Paris.”

**Jonathan Wolff, Armstrong Teasdale LLP**

“While the highlights of the deal are impressive — \$100 billion per year to emerging nations to reduce use of carbon-based fuels, increased measuring for the richest nations, and increased use of clean energy technologies — the deal is more symbolic, lacking specificity and enforcement mechanisms to

ensure those goals are met. With no penalties for non-compliance, a lack of specific emissions targets, and unlikely United States Senatorial buy-in, it's unclear what effect, if any, this agreement will have on U.S. businesses."

--Editing by Emily Kokoll.

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