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# Can Climate Lawsuits Against Energy Giants Succeed? Courts Could Soon Give Clues

Several courts are considering whether states' and municipalities' claims seeking billions in damages can go to trial

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Courts are weighing whether legal claims related to climate change against energy companies including Exxon Mobil—whose Beaumont, Texas, oil refinery is shown—are valid and deserve to go to trial. PHOTO: BING GUAN/REUTERS

Lawsuits that aim to hold major players in the fossil-fuel industry responsible for climate change are entering a critical phase, as several state courts this fall are considering whether the cases can move forward.

Several states including Delaware, Massachusetts, New Jersey and Rhode Island, and dozens of municipal governments, have accused the world's largest energy companies of playing down the industry's contributions to climate change. The lawsuits, some of which date to 2017, seek financial damages based on claims that range from public nuisance and negligence to consumer deception and racketeering.

The pool of cases continues to grow. California joined the fray Friday with a high-stakes suit that seeks billions in damages to cover state investments needed to combat climate-change effects such as erosion, flooding and fires.

Shell, Exxon Mobil, BP, ConocoPhillips and Chevron are among those named as defendants in most of the cases.

The energy companies have tried, and largely failed, to keep the lawsuits out of state legal systems entirely. Now, courts are considering whether state and local governments have brought valid legal claims that deserve to go to trial. If judges say yes, the cases could become larger threats to the industry, potentially exposing their internal deliberations to public view and raising the specter of large damage awards that could eat into company profits.

On Tuesday, a Delaware superior court judge is set to hear the companies' arguments seeking dismissal of a suit brought by the state. In New Jersey, a judge is considering whether to dismiss a lawsuit filed by the city of Hoboken.

The Hawaii Supreme Court heard arguments last month on whether a case brought by the city of Honolulu could proceed; a lower court already ruled it could. Companies this fall also face deadlines to seek dismissal of other lawsuits, including those filed by Charleston, S.C., and the city of Annapolis and Anne Arundel County in Maryland.

There is a path to victory for the states, but it will be difficult, said Doug Kysar, an environmental-law professor at Yale University. The entire modern economy relies on the oil industry, and it could be hard to pin liability solely on companies, he said, requiring proof of deception that led to the harms to the environment.

“If they get one court on their side, that will be heard in investment offices and boardrooms around the country,” Kysar said.

Legal observers say the cases bear resemblance to the sweeping litigation against the tobacco giants in the 1990s and recent lawsuits filed against the pharmaceutical industry seeking damages for the opioid epidemic, both of which ended in multibillion-dollar settlements.



Senior executives of five U.S. tobacco companies in 1998, being sworn in on Capitol Hill before testifying about the industry's multibillion-dollar settlement of public-health claims related to smoking. PHOTO: JESSICA PERSSON/AFP/GETTY IMAGES

The climate lawsuits, however, have distinct challenges. A multiplicity of factors contribute to climate change, and the driving forces behind extreme weather events are often complicated, said Dennis Vacco, a former New York attorney general who participated in the tobacco cases. Harms from tobacco use were more straightforward, and the effects of global warming are the product of activities outside of state lines, he said.

The energy companies argue the courts aren't an appropriate venue to address global climate change. In the Delaware case, for example, they say any harm the state suffered from a warming planet “cannot legally, or logically” relate to in-state energy production or marketing activities there.

“It is undisputed that total energy consumption in Delaware accounts for a negligible fraction of worldwide total greenhouse gas emissions,” the companies said in court papers.

They also say state tort-law claims are pre-empted by federal law, which vests the federal government with authority over national energy policy and interstate clean-air regulation.

That argument prevailed previously in a case involving New York City, where a federal appeals court in 2021 ruled municipalities couldn't use state tort law to hold oil companies liable. “Global warming presents a uniquely international problem of national concern. It is therefore not well-suited to the application of state law,” the appeals panel said.

In 2011, the U.S. Supreme Court rejected a bid by several states to require power companies to cap carbon-dioxide emissions. The case turned on a somewhat different issue, with the justices ruling states couldn't use federal public- nuisance law to seek court-imposed limits on emissions.

Shell in a statement said that climate change has been a matter of public record for decades and the company supports the transition to a lower-carbon future, but that the litigation isn't proper. A Chevron lawyer said the claims had fundamental legal defects. BP, Exxon and ConocoPhillips declined to comment.

The states argue the current cases are distinct and grounded in their legal rights to hold companies accountable for the environmental harm to their individual communities.

Some of the lawsuits claim climate change fueled specific disasters in their states. In Oregon, a suit filed by Multnomah County centers on the deadly heat dome that produced triple-digit temperatures in Portland and elsewhere in the Pacific Northwest in 2021. A lawsuit filed by Puerto Rico focuses on the devastation caused by Hurricane Maria in 2017.

In the recent arguments before Hawaii's high court, lawyer Vic Sher, who argued for Honolulu, said no conflict exists between requiring energy companies to be truthful about the dangers of climate change and complying with federal environmental regulations.

"Compensation in this case will not solve the climate change, but it will help this community survive it," Sher argued.

Central to the lawsuits are internal documents from big oil companies that have come to light in federal and state investigations, and in some cases through media reports. If the cases move forward, plaintiffs will have additional opportunities to access energy-company business records and communications, which could include material that is embarrassing to the industry.

Some cases are already in this discovery phase. In Massachusetts, the state high court last year allowed the attorney general's office to begin gathering materials from Exxon, which it sued in 2019. In the Rhode Island and Honolulu cases, state courts have granted limited discovery.

Past internal communications at Exxon were the subject of a Wall Street Journal article this month, based on previously unreported documents that were turned over during an investigation conducted by the New York attorney general. The materials showed that top executives behind the scenes sought to cast doubt on the severity of climate change's impacts and muddle scientific findings that might hurt its business. Lawyers are seeking some of the documents reviewed by the Journal for their pending lawsuits.

If judges allow some of the cases to go to trial, it will signal to other governments and lawyers that litigation is a viable tool for addressing climate change, said Richard Wiles, president of the Center for Climate Integrity, which supports the lawsuits.

"It would be a devastating blow, not because it's going to end the oil-and-gas industry, but as a signal to the trial bar that you can win these cases," he said.

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