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Opinion: Why cities are putting Big Oil on trial for climate change



Like tobacco lawsuits, California communities claim oil companies knowingly contributed to the danger

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Just as California leads the nation in enacting ambitious legal policies for addressing climate change, so, too, have California communities led the way in seeking compensation from oil and gas giants for their outsized contributions to climate change.

Less than a year ago, California communities filed lawsuits against the industry, claiming the companies significantly contributed to the dangerous buildup of greenhouse gases in the atmosphere and that this accumulation of pollutants is already harming them. Since then, the number of cases has tripled and they now stretch from coast to coast, leading many to conclude that Big Oil is now in the early stages of a liability tipping point not seen since the 1990s, when lawsuits were filed against Big Tobacco in almost all 50 states.

California's public nuisance laws embrace liability for damages that occur when companies fail to warn consumers about the dangers of their products. The climate lawsuits may seem exotic, but they are really simply the application of this old legal principle to a new setting.

In California, the cities of San Francisco, Oakland, Richmond, Santa Cruz and Imperial Beach and the counties of San Mateo, Marin and Santa Cruz have filed lawsuits against major fossil fuel corporations. In the case involving San Francisco and Oakland, a federal judge will hear arguments Thursday about whether to dismiss the two cities' claims against ExxonMobil, Chevron, Shell, ConocoPhillips and BP from federal court. If the case proceeds, it will be a new legal frontier for climate liability.

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That oil giants knew about the dangers of their products, yet failed to warn the public about them, is evident in the companies' own internal papers. Royal Dutch Shell even tracked its own emissions, which prompted the company in 1988 to privately caution that "by the time the global warming becomes detectable it could be too late to take effective countermeasures to reduce the effects or even to stabilize the situation."

Despite having this foreknowledge, rather than warn the public and take part in a meaningful discussion about how to shift to cleaner sources of energy, fossil fuel companies — like Big Tobacco before them — misled the public about the dangers of their products and obstructed action intended to mitigate the impacts.

To make matters worse for the companies, Shell's internal memos also make clear that it was keenly aware not only of the damage its products would cause, but of the liability those damages might entail somewhere down the road. In 1998, for example, Shell ran a climate-related scenario-planning exercise that included a "class-action lawsuit against the US government and fossil-fuel companies on the grounds of neglecting what scientists (including their own) have been saying for years."

The oil giants' conduct is already harming California coastal communities. As the complaints filed by San Francisco and Oakland have noted, rising sea levels directly attributable to the industry's products now threaten billions of dollars' worth of property. Efforts to plan for and adapt to rising sea levels and shoreline erosion are projected to cost San Francisco alone \$350 million. The unfortunate reality is those numbers are likely well below the real costs taxpayers are already paying for climate damages.

According to Richmond's complaint, the companies being sued are responsible for some 17.5 percent of the total emissions of carbon dioxide — the most abundant greenhouse gas — during the period from 1965 to 2015. Think about that. Sixteen companies and their corporate cousins caused nearly 20 percent of the buildup of dangerous greenhouse gases over the last 50 years. The planetary havoc unleashed by a small number of headstrong companies casts a sinister pall over Margaret Mead's famous observation about the power of small groups to change the world.

In the San Francisco and Oakland cases, the companies want the court to rule that federal law provides no remedy for the harm to the cities, even while the companies maintain that federal law alone governs the cities' claims. The courts should be skeptical of the companies' legal shell game.

Taxpayers can't afford for oil and gas companies to be treated as if they are too big to sue. It's time that these corporate giants begin paying their fair share for the damages they've caused.

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