Climate Accountability Lawsuits Against Big Oil

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In the last ten years, climate change litigation has emerged as a powerful tool in the global struggle to hold fossil fuel companies accountable for their humongous contribution to the destruction of the planet. While the impacts of climate change grow increasingly immediate and apocalyptic, sea levels rising, supercharged storms, blazes, and heatwaves, so has the pressure for legal recourse grown. Litigation against Big Oil is no longer abstract or rhetorical. They are more sophisticated, science-based, and legally advanced, with the aim not just to secure damages but to remake the law applicable to environmental responsibility.

The underlying idea behind climate responsibility lawsuits is surprisingly straightforward: if oil and gas corporations have knowingly caused global warming and have deceived the public regarding the harm caused, then they must be held accountable for the damages they have inflicted. However, this idea brushes against difficult intersections of tort law, administrative law, international law, and constitutional doctrine. These plaintiffs, which range from municipal governments and indigenous groups to private families, accuse fossil fuel behemoths like ExxonMobil, Chevron, Shell, BP, and others of devoting decades to running campaigns of disinformation and yet continuing to profit from the drilling and sale of fossil fuels. This alleged conduct, they state, not only exacerbated the climate emergency but deprived policymakers and the public of a chance to do something sooner.

One of the strongest initial cases to attract international attention was Milieudefensie v. Royal Dutch Shell in the Netherlands. In May 2021, a Dutch district court ruled that Shell must reduce its net carbon dioxide emissions globally by 45% by 2030 from their levels in 2019. The plaintiffs, which included the environmental organisation Milieudefensie, alleged that Shell's

conduct was contrary to Dutch civil law obligations to prevent foreseeable harm, and that its emissions constituted a threat to human rights, in particular the rights to life and family life. The court agreed, holding that Shell's business model and lack of proper measures to decrease emissions violated its duty of care. Though later reversed on appeal, it was welcomed as a climate law landmark, being one of the first to impose a binding emission cut on a private company.

Lliuya v. RWE AG was another early precedent, a cross-border case taken by Peruvian mountain guide and farmer Saúl Luciano Lliuya in Germany against German energy company RWE. The plaintiff claimed that RWE's historical emissions contributed to the melting of glaciers above his hometown of Huaraz, thus increasing the risk of a catastrophic flood. Lliuya sought a contribution from RWE toward the cost of protective infrastructure. Even though the case was dismissed in a lower court, a higher appeals court held that the action was admissible and could go to the evidence phase, an important symbolic and procedural victory. The case was one of the first attempts to use tort law to sue emitters in one country for environmental harm occurring elsewhere.

In the United States, climate responsibility claims have been scattered but are now gaining legal traction. Among these is the City and County of Honolulu v. Sunoco LP, et al., in which Honolulu is suing major oil corporations for public nuisance and deceptive advertising that hid the risks of climate change. The Hawaii Supreme Court recently allowed the case to proceed under state law, dismissing the oil companies' argument that climate cases must be heard in federal courts. That ruling is significant because fossil fuel companies have been attempting to shift such cases to federal court for years, where they can be easily dismissed based on federal

preemption doctrines. Maintaining them in state courts allows plaintiffs to employ consumer protection laws, nuisance principles, and localized harm claims to frame their arguments.

A further sensational and landmark case is Leon v. ExxonMobil et al., which was filed in Oregon. The wrongful death action alleges that the heat-induced death of a woman in the 2021 Pacific Northwest heat dome was contributed to by the emissions and activities of the fossil fuel industry. The plaintiff, Misti Leon, asserts that oil and gas companies fully understood the role their products played in causing the world's heat extremes and continued misleading people and decision-makers anyhow. The case law foundation for this case is a creative extension of personal injury and wrongful death torts into climate space by directly holding one's death to anthropogenic climate change and the defendants' misconduct. If allowed to proceed, this suit would be a seismic change in climate litigation because it would establish an immediate-liability link between carbon emissions and individual death.

Perhaps the greatest difficulty in all of these cases is causation, specifically, whether it is possible to prove that a particular defendant's emissions were the proximate cause of injury to the plaintiff. Climate change is a worldwide phenomenon with millions of contributors over generations, which makes conventional concepts of legal causation problematic. Yet climate attribution science has progressively bridged this proof gap. Researchers can now quantify the extent to which specific extreme weather events are more likely or more severe due to human-caused global warming, and some studies go as far as attempting to attribute shares of those impacts to specific companies based on historical emissions. This new field of "event attribution" science is providing courts with the science they need to establish causation with increased assurance.

Another important legal issue is preemption, and notably the U.S. specifically, where federal environmental legislation, such as the Clean Air Ac,t has often been employed by defendants in arguing that state tort claims are preempted. Courts in most cases have held against this, and that state tort law is independent, and there is no explicit congressional intent to exclude such claims. But this remains a source of continuing legal controversy, and the ultimate answer may rest on interpretation by the U.S. Supreme Court. A potential landmark case is BP P.L.C. v. Mayor and City Council of Baltimore, which has already been to the Supreme Court once on a procedural issue and likely returns on the merits at any time soon.

A few of the most creative lawsuits also draw from global human rights models. For example, climate cases have already been brought to the European Court of Human Rights, for example, a case by a group of Swiss old ladies, Klima Seniorinnen Schweiz, against Switzerland's government. Not aimed at the fossil fuel corporations, they broaden the remit of the law and signal growing global recognition that climate change is an issue of rights. It is simple to foresee future litigation against corporations that specifically ground themselves on international human rights principles, particularly because multinational corporations are covered by different systems of law.

Consumer protection and corporate fraud are two other strategic legal strategies. Various American municipalities and states have filed suits alleging that oil firms misrepresented their climate studies deceptively and made fraudulent claims in advertising. These suits argue that companies like ExxonMobil had accepted the climate change science within their walls as far back as the 1970s but publicly disavowed the science to advance their economic agendas. By framing the issue as corporate fraud rather than environmental harm, plaintiffs seek to sidestep

thorny issues of causation and focus on misleading commercial speech, an area where courts are more apt to offer remedies.

The utilitarian and symbolic interest in the line in these cases is significant. A successful verdict against a big oil company can translate into enormous dollar damages for cities with climate-change adaptation costs, such as building sea walls, reinforcing infrastructure, and post-natural disaster recovery. Of greater importance, these cases arguably represent a legal deterrent that would compel companies to change their ways or face the continual risk of litigation. Already, the threat of litigation has prompted some companies to increase emissions reporting, set internal climate goals, and restrict investment in high-carbon projects. Critics, however, argue that litigation won't solve the climate crisis, and might take resources away from bigger policy solutions like carbon charges, government regulations, or international climate agreements.

Nonetheless, litigation has proven to be a powerful catalyst. Procedures of legal discovery in litigation brought to light internal documents that showed oil companies have long known the dangers of climate change and had willfully misled the public. The revelations have caused public outrage and undermined the reputation of the industry. Further, litigation is a unique agent of public accountability, compelling corporate managers to testify under oath and open themselves up to public scrutiny in a way that is not characteristic of regulatory approaches.

There is also a new convergence of climate lawsuits with investor accountability. Shareholders are making oil companies more and more transparent and sustainable, and ongoing and settled cases have emerged as major concerns in risk analysis for investors. Companies subject to multiple lawsuits can see their stock prices fall, insurance rates rise, and their

financing prospects decline. This way, litigation ensures not only legal but also economic responsibility.

At the international level, there are heated debates to create legal frameworks that could allow claims related to climate change all over the world. Proposed concepts include the establishment of an international court for environmental justice or the expansion of the jurisdiction of already existing international courts to include corporate climate accountability. While these ideas are in their infancy, they do indicate a growing realization that climate harm does not know national frontiers and that global legal cooperation may be enlisted to address transboundary environmental injustices.

The future of climate liability litigation is uncertain, but legal momentum is real. As every new case is filed, more precedents are set, and more science comes to light, the path to corporate responsibility becomes clearer. The fossil fuel sector, previously all but insulated from climate lawsuits, is now squarely in the crosshairs of courts all over the world. The outcomes of those cases will not only establish the future course of environmental law but also the global response to climate change.

Overall, climate responsibility lawsuits against Big Oil represent a new and ambitious frontier in the law. They defy conventional notions of causation, liability, and justice in the midst of a previously unseen global challenge. They face lofty scientific, legal, and political challenges, but their emergence portends a shift in both social norms and legal convention. The courtroom is becoming increasingly a point of contention in the battle for climate justice, and as the world grapples with the cost of a warming planet, these cases represent one of the most restricted means by which the most culpable contributors to the climate crisis are held accountable. Whether they ultimately result in colossal damages, enforceable injunctions, or

substantial reform in business practices, the cases have already succeeded in rewriting the narrative of responsibility, and that alone constitutes a stunning legal achievement.

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