

Chapter Four:

Road Trip — The Active Recruitment of Climate Liability Lawsuits

The climate litigation campaign leverages the financial support of its major donors, its network of seemingly outside “validators” and its public relations campaign to sell the litigation to local and state governments to sign up for climate lawsuits.

The lawyers behind this litigation believe their chance of getting a successful outcome is not necessarily tied to the legal underpinnings of the claims, but rather the number of cases they can file. Steve Berman—a plaintiffs’ attorney with Hagens Berman and a leader in this movement—explained this strategy to *VICE* in a 2017 interview, saying, “Imagine if I could get ten or 15 cities to all sue and put the same pressure on the oil companies that we did with tobacco companies and create some kind of massive settlement.”¹

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This chapter discusses the effort by attorneys, activists and others who are crisscrossing the country trying to convince mayors, attorneys general and other public officials to bring climate lawsuits against companies in the energy industry. They have been targeting jurisdictions where they hope to find a judge who, notwithstanding the legal shortcomings of the legal claims, will allow a lawsuit to at least get past a motion to dismiss. They then will seek to leverage such a procedural victory to try to recruit additional localities for the litigation.

Public records reveal that lawyers have been actively selling this climate litigation since 2016, with videos and presentations showing some of their sales pitches.² The lawyers are telling the local governments that they and their funders will pay for the litigation, and the governments will owe nothing if the litigation is not successful. They hope the elected officials will see this as an easy opportunity to potentially bring in revenue while, at the same time, saying they are “taking action” on climate change.

The Competition for Generating Climate Litigation

As detailed in Chapter One, there are several attorneys and organizations actively seeking to enlist local governments to sue energy manufacturers over climate change. Matt Pawa was a veteran of the first round of climate change lawsuits, and, later joined Steve Berman to start pitching the lawsuits together. Other attorneys and environmental activists like Sharon Eubanks and Wendy Abrams have also joined these pitches.³ Pawa eventually became a partner of Berman’s firm, Hagens Berman, which initiated climate lawsuits on behalf of King County, New York City, San Francisco and Oakland between September 2017 and May 2018.^{4,5,6} He co-chairs Hagens Berman’s Environmental Practice Group.⁷

Vic Sher of Sher Edling has also spent the last few years approaching local and state governments, trying to convince municipalities, attorneys general and even professional associations to bring lawsuits against energy manufacturers. He has also worked in concert with other groups such as EarthRights International and individuals like Ann Carlson, co-director of UCLA’s Emmett Center on Climate Change and the Environment, who has disclosed that she is providing consulting services on these cases.⁸

Pawa and Sher have a history. Pawa was retained by the State of New Hampshire in the 2012 MTBE case *New Hampshire v. ExxonMobil* and recommended Sher Leff—Vic Sher’s law firm at the time—as co-counsel.⁹ They agreed to split attorney fees based on a set percentage. One of the claims settled, resulting in a \$236 million award for the state with more than \$27 million in attorneys’ fees. Sher Leff deposited the attorney fees in an account it managed and sought to retain a greater portion of these fees than its agreed upon percentage would allow.¹⁰ Pawa sued to enforce the initial agreement, and the arbitrators and courts sided with Pawa, affirming his share of the fees and awarding him an additional \$6 million to cover his costs to enforce the contract.¹¹

In the climate change cases, Pawa and Sher’s firms appear to be more competitors than collaborators. For example, they both pitched San Francisco and Oakland to represent them in their climate change cases.¹² The cities first retained Hagens Berman, but after appealing their lawsuit’s dismissal to the U.S. Court of Appeals for the Ninth Circuit replaced Hagens Berman with Sher Edling.^{13,14} As

this Chapter discusses, both law firms are actively working with their partisans to sign up more governments and groups for this litigation.

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The Climate Liability Litigation Pitch in Florida: A Case Study

Florida provides a vivid example of how local governments are being courted for this litigation. In late 2018 and early 2019, Sher Edling and EarthRights International (ERI) actively pitched elected officials in Florida to pursue climate litigation. For example, ERI's general counsel, Marco Simons, disclosed that it contacted five “major South Florida municipalities” about the prospect of bringing a lawsuit in late 2018.¹⁵ To date, these efforts have included hiring lobbyists, posting billboards and deploying social media advertising.^{16,17} So far, their tactics have been unsuccessful, with at least one city in the Sunshine State publicly rejecting the idea of pursuing climate litigation against energy manufacturers.¹⁸

FORT LAUDERDALE

In October 2018, ERI approached the City Commission of Fort Lauderdale in an attempt to convince the city to bring a climate lawsuit against manufacturers. ERI's Simons told the Commission that the goal of the litigation would be to get money from energy manufacturers to pay for municipal projects that would help address the local impacts of climate change.¹⁹ He also raised the possibility that ERI could join “with co-counsel from private firms,” who “would also be interested in pursuing this on a contingency fee-basis,” telling the City Commission that there would be “no up-front cost to the city.”²⁰

The City Commission expressed concern over how these lawsuits could harm the city and its taxpayers. For example, in response to a question from an official, Simons conceded that it is “always a possibility” that Fort Lauderdale could be required to pay the manufacturers' legal fees, if the lawsuit is unsuccessful.²¹

To lay the groundwork for the pitch, ERI worked with a lobbyist to schedule meetings for Simons with Fort Lauderdale officials. Indeed, the local lobbyist, Seth Platt, scheduled several meetings between Simons and Fort Lauderdale's mayor and chief resilience officer.^{22,23} Records indicate, though, that Platt was retained for this effort by the Institute for Governance & Sustainable Development, not ERI.^{24,25}

While IGSD paid for Platt's lobbying services, records indicate that no one directly associated with the organization attended these meetings.

Likely behind the idea to hire a lobbyist was Richard Wiles—he appears as the principal on Platt's lobbying registration.²⁶ Wiles is the executive director of the Center for Climate Integrity, a project of IGSD that is heavily involved in establishing and executing aggressive marketing campaigns to promote climate liability litigation in Florida.²⁷ He is also the publisher of Climate Liability News, a blog dedicated to advancing climate liability litigation.^{28,29}

Platt also arranged for Vic Sher and Matt Edling of Sher Edling to join Simons for a meeting with Alain Boileau, Fort Lauderdale's city attorney.³⁰ Platt was asked by a reporter about contracting for ERI and Sher Edling under his contract with IGSD, but refused to comment.^{31,32} Boileau, though, reportedly noted that similar litigation was facing significant headwind in courts around the country.³³ In May 2019, he said that Fort Lauderdale had no intention of suing energy manufacturers over climate change.³⁴

MIAMI BEACH

Beginning in February 2018, Chuck Savitt, Sher Edling's Director of Strategic Relationships, began reaching out to public officials in Miami Beach to discuss climate liability litigation.^{35,36} Specifically, he emailed Dan Gelber, Mayor of Miami Beach, and Susanne Torriente, Miami Beach's Chief Resiliency Officer.³⁷ Upon learning of this correspondence, Raul Aguila, Miami Beach's City Attorney, cautioned his colleagues not to meet with Savitt unless he was registered as a lobbyist in their jurisdiction:

“Who is Mr. Savitt?” Aguila wrote in an email.³⁸ “Is he an attorney that wants me to retain him in potential sea level rise litigation? What is the purpose of the meeting? If so, he needs to register as a lobbyist and Mayor nor anyone else should meet with him until he does so.”

Lobbying laws in Miami Beach are robust. Individuals who want to “encourage the passage, defeat or modification of any ordinance, resolution, action or decision of any commissioner; any action, decision, recommendation of the City Manager or any City board or committee; or any action, decision or recommendation of any City personnel during the time period of the entire decision-making process on such action, decision or recommendation that foreseeably will be heard or reviewed by the City Commission, or a City board or committee,” must register as a lobbyist and pay an \$850 fee.^{39,40}

In response to Aguila's note of caution, Torriente responded that she told Savitt to register as a lobbyist before she would schedule a meeting.⁴¹ According to city lobbying registrations, neither Savitt, nor any other employee of Sher Edling, has ever registered as a lobbyist in Miami Beach.⁴²

Further, the content of Savitt's emails suggests he was trying to avoid any such scrutiny. For example, he wrote to one city official, saying, “[g]iven state law, let's talk rather than me send you anything.” In another email, he wrote, “Given public records laws it is much better for us to talk on the phone. Do you have time today or tomorrow?”^{43,44}

This episode provides a window into how these lawyers are working to persuade state and local governments into filing climate lawsuits against energy manufacturers.^{45,46}

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CITY OF MIAMI

In Miami, proponents of climate liability litigation deployed a comprehensive public relations campaign to try to convince the city to bring a lawsuit against manufacturers.

In March 2018, IGSD's Center for Climate Integrity worked with the Miami Climate Alliance to rent several billboards in an effort to urge Miami to file litigation.^{47,48} The latter organization counts groups such as the Miami Chapter of the Sierra Club, 350.org, Union of Concerned Scientists and U.S. Climate Action Network as members; and all of these groups, as discussed in earlier chapters of *Beyond the Courtroom*, are leaders of the climate liability campaign.⁴⁹



The press release announcing this local campaign listed the media contact as an employee of M+R, the same public relations firm hired by ERI to promote its climate liability lawsuit in Colorado.^{51,52}

Sher Edling's Chuck Savitt also reached out to the City of Miami asking officials to meet with Vic Sher and Matt Edling.⁵³ Emails between IGSD lobbyist Seth Platt and Fort Lauderdale public officials referenced the potential for Miami to file a climate lawsuit. Platt noted that CCI was operating an “umbrella campaign for that broader effort” and that they would “adopt language and assets to fit each context, including an entirely grassroots, behind-the-scenes effort as needed.”⁵⁴

Further Efforts by Lawyers, Activist Academics and Others to Use Their Connections to Advance the Climate Liability Campaign

As we have seen in additional states, the lawyers, activists, public relations professionals, university faculty and others involved in the climate liability campaign have tried to use their connections to prompt additional cases. In 2019, for example, they sought to use the U.S. Conference of Mayors gathering in Honolulu to generate interest in the litigation. They held a Climate Summit before the official start of the conference and sponsored a resolution at the Conference of Mayors Annual Meeting to voice support for the litigation.

The Union of Concerned Scientists, it was learned, orchestrated this effort. Documents obtained via California's Public Records Act show that UCS helped draft the resolution and worked with City of Richmond Mayor Tom Butt, who put forth the resolution at the Conference, to build support for it.⁵⁵

A May 9, 2019 email from UCS Senior Strategist and Corporate Campaign Advisor Nancy Cole shows her corresponding with multiple City of Richmond staffers, sharing an agenda for a pending conference call that listed several items relating to the resolution:

- Providing “[s]ubstance, generally, for Mayor Butt to include in his panel conversation”
- Sharing information on “what we have both found out; feedback on political advisability of approach”
- Clarifying “whether moving forward If so, next steps – who’s going to do what by when”
- Deciding whether to “recruit advance ‘signers’ or co-proponents? If so, who does what?”

When asked by a reporter about his coordination with UCS, Mayor Butt responded, “Clearly, we could not do this by ourselves.”⁵⁶

UCS also paid certain costs to facilitate support for the proposal at the Conference's Annual Meeting. Before the event, Santa Cruz Mayor Martine Watkins published an op-ed in the *Santa Cruz Sentinel* explaining that she would attend the Climate Summit to speak to other public officials about climate change litigation.⁵⁷ She stated that she would be attending the conference at no expense to taxpayers. Public records requests showed that UCS paid her registration fee, a cost that amounted to somewhere between \$950 and \$2,000.⁵⁸

HONOLULU

What's more, the target of these efforts appears to include the City of Honolulu itself. In June 2019, a *Financial Times* article named Honolulu as one of the cities most likely to file the next climate liability lawsuit.⁵⁹

In May 2019, the University of Hawai'i's Environmental Law Program partnered with the Center for Climate Integrity to host a panel discussion, “Climate Change Science & Litigation: Communities Go

to Court to Recover Costs of the Climate Crisis.”⁶⁰ The event was presented as a locally-driven forum.

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It was organized, though, by allies of Sher Edling. Moderator and host of the event was Denise Antolini, the director of the University of Hawai'i's Environmental Law Program and former employee of Vic Sher at the Sierra Club Legal Defense Fund in the 1990s.⁶¹ Sher began his tenure at the Sierra Club Legal Defense Fund in 1986 and was the organization's president from 1994 to 1997.⁶² Antolini worked there for eight years and managed the Honolulu office from 1994 to 1996.⁶³ Sher, who participated in the event as a panelist, touted his relationship with Antolini, calling himself her “first boss.”⁶⁴

In addition to Sher, Ann Carlson, co-director of UCLA's Emmett Center on Climate Change and the Environment, was there to tout the litigation. Carlson is a consultant for the plaintiffs in some of these cases and often appears at conferences with Sher.⁶⁵ The panel also featured representatives from the UCS, including Nancy Cole, and the Center for Climate Integrity.⁶⁶

Two days after the event, Antolini authored a newspaper column with CCI's Alyssa Johl, advocating that Hawai'i and its cities file a climate change lawsuit against energy manufacturers. Neither of them disclosed their connections to Sher.⁶⁷

It looks like these efforts may have convinced Honolulu Mayor Kirk Caldwell to consider the litigation. At a July 2019 forum held by the U.S. Senate Democrats' Special Committee on the Climate Crisis, he urged the lawmakers not to preempt the ability of municipalities to file these lawsuits.⁶⁸

WASHINGTON D.C.

Some efforts to recruit climate lawsuits are not as public, but rely on the same network of activists and lawyers. For example, in 2016 Washington D.C.'s Attorney General Karl Racine joined the “AGs United for Clean Power” coalition, which was spearheaded by then-New York Attorney General Eric Schneiderman.⁶⁹ On March 29, 2016, the AGs were briefed on climate litigation and investigations by Matt Pawa and the Union of Concerned Scientists' Peter Frumhoff. Reuters reported this briefing revealed a “previously unknown level of coordination with outside advisers” and state AGs.⁷⁰

In February 2019, Racine's office solicited outside counsel to work on a contingency-fee basis to support an “investigation and potential litigation against ExxonMobil . . . in connection with Exxon's statements or omissions about the effects of its fossil fuel products on climate change.”⁷¹ One of the firms Racine's office sent this RFP to was Hagens Berman, Pawa's current firm.⁷²

Racine has also sought to tap into the State Energy and Environmental Impact Center at the New York University School of Law.⁷³ The Center, funded by billionaire Michael Bloomberg, pays for attorneys to work in state attorneys general offices if the AG will agree that the attorneys will work exclusively on “clean energy, climate and environmental issues,” including climate change-related litigation and investigations of energy manufacturers.^{74,75} Racine initially downplayed this outreach, refusing to comply with an open records request regarding this communication. The emails were disclosed only after the Competitive Enterprise Institute sued Racine's office to release them.⁷⁶

SEATTLE

Another example is in Seattle, where Mayor Jenny Durkan already had a direct connection with the climate litigation network. In 2016, while working for the law firm Quinn Emanuel Urquhart & Sullivan, LLP, Durkan represented 350.org, whose co-founders, Bill McKibben and Jamie Henn, have repeatedly endorsed the municipal public nuisance climate lawsuits against energy manufacturers.⁷⁷

It, therefore, was not surprising that soon after Durkan's election, City Attorney Peter Holmes sent a letter to her and City Council President Bruce Harrell describing his investigation into potential legal avenues for suing energy manufacturers over climate change.⁷⁸ He retained Keller Rohrback LLP, a Seattle-based law firm, to conduct “the exploration of facts specific to Seattle, including what scientists know about the impact of climate change in our region, and the City's available legal options.”⁷⁹ It is notable that Seattle did not proactively retain Hagens Berman, which is based in the city and has tried to build a reputation as experts on climate litigation.

While not one of the two big climate litigation firms, Keller Rohrback is not new to climate litigation at all.⁸⁰ It served as counsel on two *amicus* briefs for Dr. Robert Brulle, the Center for Climate Integrity, Justin Farrell, Benjamin Franta, Stephan Lewandowsky, Naomi Oreskes and Geoffrey Supran in *County of San Mateo v. Chevron Corporation and Mayor and City Council of Baltimore v. BP P.L.C., et al.*^{81,82} As detailed in Chapter Two, these individuals have long been key players in the climate liability campaign.⁸³

CONCLUSION

Over the past few years, it has become clear that climate litigation is the result of a highly orchestrated campaign of lawyers, activists, academics and public relations firms working hard to recruit communities to bring the litigation. Some municipalities will continue buying their pitches for “free” lawsuits. But, rest assured, nothing is entirely free. City attorneys must devote time and local resources to oversee any legal case. Also, as MAP has explained, suing

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manufacturers over lawful products has many negative impacts on constituents and local economies.^{84,85,86} Given this state of affairs, it is encouraging that many communities have resisted climate litigation, realizing that suing energy manufacturers over climate change is legally unsound and counterproductive to fighting this shared global challenge.

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