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PHASE 1 COMMON LAW TORT LITIGATION – ROUND I (2001-2011)

Between 2004 and 2013, trial attorneys and public officials filed common law tort litigation against manufacturers, alleging that the companies were responsible for the greenhouse gas emissions that were contributing to climate change, causing natural disasters and other local impacts of the phenomenon to become harsher. As these cases progressed through the court system, judges at all levels made similar decisions: plaintiffs' cases had been dismissed because they raised "political questions" – the issue of climate change – that were not in the judiciary's purview to decide. Ultimately, one of these cases – *American Electric Power v. Connecticut* – made its way to the U.S. Supreme Court, which ruled that the plaintiffs' claims were displaced by the federal Clean Air Act.

These cases mark the beginning of a troubling trend that continues today: plaintiffs' attorneys and public officials filing politically motivated and misguided litigation in an attempt to force manufacturers to pay for the impacts of global climate change, a shared challenge that requires innovation – not litigation – to solve.

<p>2001: Plaintiffs' attorney and environmental activist Matt Pawa founds the Global Warming Legal Action Project (GWLAP).</p> <p>July 21, 2004: Eight states, the City of New York and three land trusts (the latter of which were represented by Matt Pawa) separately sue six power companies claiming that their greenhouse gas emissions constituted a public nuisance.</p> <p>September 30, 2005: A group of Mississippi residents file a class action lawsuit against several insurance, mortgage lending and fossil fuel companies, alleging that they are responsible for the greenhouse gas emissions that contribute to climate change and worsened Hurricane Katrina, causing the plaintiffs property damage.</p> <p>September 20, 2006: The state of California sues a group of automobile manufacturers for public nuisance, alleging that their vehicles caused a significant source of greenhouse gas emissions and have worsened the effects of climate change.</p> <p>2007: The Union of Concerned Scientists publishes "Smoke, Mirrors and Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science," alleging that ExxonMobil had worked to "sow doubt" about climate change in public forums.</p> <p>August 30, 2007: The U.S. District Court for the Southern District of Mississippi dismisses <i>Cornier v. Murphy Oil USA, Inc.</i>, ruling that the plaintiffs did not have standing and that the issue of climate change must be resolved by the executive and legislative branches of government, not the courts.</p>	<p>September 17, 2007: The U.S. District Court for the Northern District of California dismisses <i>California v. General Motors Corp.</i>, ruling that the issues raised in the lawsuit were "political questions," which must be addressed by the legislative and executive branches of the federal government.</p> <p>February 26, 2008: The native village of Kivalina, Alaska – represented by Matt Pawa and Hagens Berman Sobol Shapiro attorney Steve Berman – files a lawsuit against fossil fuel and power companies for impacts of climate change on the village that it alleges were caused by the companies' greenhouse gas emissions.</p> <p>June 19, 2009: The state of California appeals the district court's dismissal of <i>California v. General Motors Corp.</i> to the U.S. Ninth Circuit Court of Appeals.</p> <p>June 24, 2009: California voluntarily withdraws its appeal of <i>California v. General Motors Corp.</i> from consideration by the Ninth Circuit, effectively ending the case in favor of General Motors.</p> <p>October 16, 2009: The U.S. Fifth Circuit Court of Appeals partially reverses the district court's dismissal of <i>Cornier v. Murphy Oil USA, Inc.</i>, ruling that the plaintiffs did have standing and none of their claims present political questions that cannot be answered by the court.</p> <p>February 26, 2010: The Fifth Circuit grants plaintiffs' petition for a rehearing with the court's entire panel (en banc) in <i>Cornier v. Murphy Oil USA, Inc.</i></p>	<p>May 28, 2010: The Fifth Circuit dismisses the en banc rehearing in <i>Cornier v. Murphy Oil USA, Inc.</i> due to a loss of quorum because of a judge's recusal, effectively dismissing the plaintiffs' appeal. Thus, the district court's decision granting the defendants' motion to dismiss stands.</p> <p>June 3, 2010: Harvard researcher and historian of science Naomi Oreskes publishes <i>Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming</i>.</p> <p>October 26, 2010: The plaintiffs in <i>Cornier v. Murphy Oil USA, Inc.</i> file a petition for a writ of mandamus with the U.S. Supreme Court, seeking an order to overturn the Fifth Circuit's dismissal of their appeal.</p> <p>January 10, 2011: The U.S. Supreme Court denies the plaintiffs' request for a writ of mandamus without comment in <i>Cornier v. Murphy Oil USA, Inc.</i>, effectively ending the case.</p> <p>June 20, 2011: The U.S. Supreme Court dismisses <i>American Electric Power v. Connecticut</i> in a unanimous decision in which Justice Ginsberg writes that the plaintiffs' claims are displaced by the federal Clean Air Act.</p>
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PHASE 2 RECRUITING ALLIES & DEFINING STRATEGIES (2011-2016)

The first round of common law tort litigation targeting manufacturers came to an unsuccessful end, and those involved went back to the drawing board. In the coming years, activists, trial attorneys and public officials would join forces to form organizations and coalitions focused on one common goal: determining an effective strategy that would result in manufacturers paying for the impacts of climate change.

<p>September 2011: Climate attribution scientist Richard Heede and Harvard professor Naomi Oreskes found the <u>Climate Accountability Institute</u>.</p> <p>June 14-15, 2012: Activists, attorneys – including Matt Pawa – and others meet for a summit in La Jolla, California – hosted by the Climate Accountability Institute and Union of Concerned Scientists – to discuss how to bring lawsuits against energy manufacturers for climate change damages.</p> <p>September 21, 2012: The U.S. Ninth Circuit Court of Appeals affirms a lower court's decision to dismiss <i>Native Village of Kivalina v. ExxonMobil Corp.</i>, ruling that the plaintiffs' claims were displaced by the federal Clean Air Act.</p> <p>May 20, 2013: The U.S. Supreme Court denies plaintiffs' request for a writ of certiorari without comment in <i>Native Village of Kivalina v. ExxonMobil Corp.</i></p> <p>November 22, 2013: The Climate Accountability Institute's Richard Heede publishes a paper that attributes greenhouse gas emissions released into the atmosphere between 1854-2010 to specific fossil fuel and cement manufacturers.</p> <p>2014: Kert Davies, former research director for Greenpeace, establishes the Climate Investigations Center, an organization focused on gathering internal company documents from energy manufacturers.</p> <p>July 30, 2014: The minority staff for the United States Senate Committee on Environment and Public Works publishes a report detailing how a group of individuals and foundations are driving the "far-left environmental machine," implicating donors such as the Rockefeller Brothers Fund and the Rockefeller Family Fund.</p> <p>2015: The Niskanen Center is founded as a libertarian think-thank in Washington D.C.</p>	<p>June 2015: Naomi Oreskes, Matt Pawa and Sharon Eubanks, the attorney who led the U.S. Department of Justice's investigation of the tobacco industry in the 1990s, meet with staff for the New York Attorney General to discuss potential Racketeer Influenced and Corrupt Organizations Act (RICO) lawsuits against energy manufacturers.</p> <p>September 16, 2015: <i>InsideClimate News</i> publishes the first article in its "Exxon Knew" series, which was paid for by the Rockefeller Brothers Fund and Rockefeller Family Fund as a part of a coordinated effort to bring litigation against energy companies.</p> <p>October 9, 2015: Graduate fellows in the Columbia University School of Journalism's Energy and Environment Reporting Project publish the first in a series of articles on ExxonMobil in the <i>Los Angeles Times</i>.</p> <p>November 4, 2015: New York Attorney General Eric Schneiderman launches an investigation into ExxonMobil, alleging that the company misled investors and the general public about its research into the science of climate change.</p> <p>2016: GWLAP receives at least \$150,000 from the Rockefeller Brothers Fund and the Wallace Global Fund for "work holding liable the corporations most responsible for the rapidly changing climate and its impacts on people and property."</p> <p>January 8, 2016: Activists and attorneys host a strategy session at the Rockefeller Family Fund and Rockefeller Brothers Fund headquarters in New York City to discuss coordinating tactics for various groups to target energy "industry associations," as well as how to coordinate their campaigns targeting state attorneys general and the U.S. Department of Justice.</p>	<p>March 29, 2016: Matt Pawa and Union of Concerned Scientists' Peter Frumhoff brief a group of state attorneys general, urging them to sue energy manufacturers over climate change.</p> <p>March 29, 2016: Al Gore and New York Attorney General Eric Schneiderman host the "AGS United For Clean Power Press Conference" where both Massachusetts Attorney General Maura Healey and U.S. Virgin Islands Attorney General Claude Walker announce they are opening separate investigations into whether ExxonMobil misled the public on climate change.</p> <p>April 19, 2016: Massachusetts Attorney General Maura Healey issues a civil investigative demand to ExxonMobil concerning whether the company misled consumers and/or investors with respect to the impact of fossil fuels on climate change and climate change-driven risks to Exxon's business.</p> <p>May 2016: Harvard University's Emmett Environmental Law Clinic and the Union of Concerned Scientists host a climate workshop to connect "climate science colleagues," "prospective funders," and "senior staff from attorney's general offices" in an off-the-record meeting to discuss climate liability for energy manufacturers.</p>
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PHASE 3 COMMON LAW TORT LITIGATION – ROUND 2 (2016-2020)

After years of pitching public officials to launch investigations and file common law tort litigation against energy manufacturers, plaintiffs' law firms—particularly Sher Edling LLP and Hagens Berman Sobol Shapiro LLP—began bringing a new round of lawsuits in 2017. These law firms tried to convince municipalities, states and attorneys general across the country—from San Francisco, California to Baltimore, Maryland—to hire them to file public nuisance lawsuits against energy producers. In attempting to find a work-around to the legal theories that failed in the first round of common law tort litigation, the lawyers claimed that these new lawsuits were not about greenhouse gas emissions; rather, they were alleging that it was the man-manufacturers' production, sale and marketing of their products that created a public nuisance by contributing to the impacts of climate change – a theory that has so far failed in the courts.

<p>August 2016: Plaintiffs' attorneys Vic Sher and Matt Edling form a new environmental law firm, <u>Sher Edling LLP</u>.</p> <p>2017: An environmental nonprofit, <u>Resources Legacy Fund</u>, donates \$432,129 to Sher Edling.</p> <p>July 17, 2017: On behalf of San Mateo County, the City of Imperial Beach, and Marin County, Sher Edling files a public nuisance climate change lawsuit against 37 energy manufacturers in California state court, alleging that the energy producers contributed to the climate change impacts faced by the municipalities and should pay damages.</p> <p>August 2017: The Institute for Governance and Sustainable Development launches the Center for Climate Integrity, a public relations campaign dedicated to encouraging entities to file litigation against energy manufacturers for climate change impacts.</p> <p>August 17, 2017: With the support and a \$5.6 million foundational grant from Michael Bloomberg, the New York University School of Law establishes the State Energy and Environmental Impact Center, which will provide "legal assistance to interested attorneys general on specific administrative, judicial or legislative matters involving clean energy, climate change and environmental interests of regional and national significance."</p> <p>August 23, 2017: Naomi Oreskes and fellow Harvard researcher Geoffrey Supran publish a study alleging that ExxonMobil misled the public on climate change via advertisements the company placed in <i>The New York Times</i>.</p> <p>September 5, 2017: Steve Berman's Hagens Berman Sobol Shapiro LLP hires Matt Pawa to co-chair its environmental law practice.</p> <p>September 19, 2017: Represented by Hagens Berman, the City of San Francisco and the City of Oakland file public nuisance climate change lawsuits against energy manufacturers in California state court.</p> <p>September 28, 2017: Niskanen Center chief counsel David Bookbinder writes a blog post centered on the City of Oakland's public nuisance climate change lawsuit.</p> <p>October 11, 2017: The UCLA Emmett Institute on Climate Change & the Environment hosts a talk with Sher Edling's Vic Sher titled, "Suing Over Climate Change Damages: The First Wave of Climate Lawsuits."</p> <p>December 11, 2017: In an editorial for Vox, the Niskanen Center's General Counsel David Bookbinder discloses that he had "been consulting with lawyers working on the nuisance cases."</p> <p>December 20, 2017: On behalf of the City and County of Santa Cruz, Sher Edling files another public nuisance climate change lawsuit against energy manufacturers.</p> <p>2018: Resources Legacy Fund donates over \$1.3 million to Sher Edling LLP.</p> <p>January 2018: ExxonMobil files a petition in a Texas District Court asking the court to allow the company to depose the California public officials and Matt Pawa suing the company for public nuisance, describing inconsistencies between climate risk disclosures made in their municipal bonds and allegations of past and future damage from climate change in the lawsuits.</p> <p>January 2018: The Center for Climate Integrity launches the "Pay Up Climate Polluters" campaign, a public relations campaign that encourages cities across the country to file climate lawsuits against energy manufacturers.</p> <p>January 9, 2018: On behalf of New York City, Hagens Berman files a public nuisance climate change lawsuit against the world's top five investor-owned fossil fuel companies.</p>	<p>January 22, 2018: Represented by Sher Edling, the City of Richmond files a public nuisance climate change lawsuit against energy manufacturers.</p> <p>January 25, 2018: During an appearance on "The Bernie Sanders Show" podcast, New York City Mayor Bill de Blasio admits that the city's public nuisance lawsuit is a way to "help bring the death knell" to energy manufacturers.</p> <p>February 2018: The Niskanen Center receives a \$200,000 grant "for its climate program" from the Rockefeller Brothers Fund.</p> <p>February 8, 2018: <i>Legal Newsline</i> reports that the City of Oakland would have to pay Hagens Berman 23.5 percent of any award it receives from a victory or settlement of its climate change public nuisance lawsuit.</p> <p>February 20, 2018: Chuck Savitt, Sher Edling's Director of Strategic Client Relationships, begins reaching out to public officials in Miami Beach to discuss public nuisance litigation against energy manufacturers.</p> <p>February 22, 2018: Cleveland State University professor Kimberly Neundorff, Ph.D., publishes a rebuttal to Naomi Oreskes and Geoffrey Supran's August 2017 study on ExxonMobil, finding it "unreliable, invalid, biased, not generalizable, and not replicable."</p> <p>March 2018: The Center for Climate Integrity works with the Miami Climate Alliance to rent several billboards across the city in an effort to urge Miami to file climate change litigation against energy manufacturers.</p> <p>March 21, 2018: Both parties in the now-consolidated San Francisco and Oakland lawsuits present a first-of-its-kind climate science "tutorial" to and at the direction of U.S. District Judge William Alsup.</p> <p>April 17, 2018: The City of Boulder, Boulder County and San Miguel County file a public nuisance climate change lawsuit against ExxonMobil and Sunco Energy. The Colorado municipalities are represented by David Bookbinder of the Niskanen Center, EarthRights International and the Hannon Law Firm.</p> <p>May 9, 2018: Represented by Hagens Berman, King County, Washington files a public nuisance climate change lawsuit against the world's top-five investor owned energy manufacturers.</p> <p>May 10, 2018: Seattle City Attorney Peter Holmes sends a letter to Seattle Mayor Jenny Durkin and Seattle City Council President Bruce Harrell describing his investigation into potential legal avenues for suing energy manufacturers over climate change.</p> <p>May 17, 2018: The U.S. Department of Justice files an amicus brief in support of the energy manufacturers in the now-consolidated San Francisco and Oakland case.</p> <p>June 25, 2018: U.S. District Court Judge William Alsup for the Northern District of California dismisses San Francisco and Oakland's lawsuit against energy manufacturers, ruling that climate change "deserves a solution on a more vast scale than can be supplied by a district judge or jury in a public nuisance case."</p> <p>July 2, 2018: Represented by Sher Edling, the state of Rhode Island files a public nuisance climate change lawsuit against several energy manufacturers.</p> <p>July 19, 2018: U.S. District Court Judge John Keenan dismisses New York City's climate change lawsuit from federal court, ruling that "the serious problems caused [by climate change] are not for the judiciary to ameliorate. Global warming and solutions thereto must be addressed by the two other branches of government."</p>	<p>July 20, 2018: Represented by Sher Edling, the City of Baltimore files a public nuisance climate change lawsuit against several energy manufacturers.</p> <p>July 26, 2018: New York City appeals its climate change lawsuit to the U.S. Second Circuit Court of Appeals.</p> <p>September 26, 2018: During a panel discussion at Climate Week NYC, Susan Amron, chief of the environmental division of the New York City Law Department, discusses the city's public nuisance climate change lawsuit, saying, "And really what we're trying to do is affect the bottom line—the financial equation for the use of fossil fuels."</p> <p>October 23, 2018: EarthRights International pitches the City Commission of Fort Lauderdale, Florida on filing a public nuisance climate change lawsuit at an official commission meeting.</p> <p>November 14, 2018: Represented by Sher Edling, the Pacific Coast Federation of Fishermen's Associations files a public nuisance climate change lawsuit against several energy manufacturers in California state court.</p> <p>November 21, 2018: San Francisco and Oakland file Hagens Berman and hire Sher Edling to represent the municipalities in the appeal of their public nuisance climate lawsuit.</p> <p>2019: February 2019: Washington D.C. Attorney General Karl Racine solicits 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."</p> <p>March 13, 2019: San Francisco and Oakland appeal their climate lawsuit to the U.S. Ninth Circuit Court of Appeals.</p> <p>April 25, 2019: The Center for Climate Integrity co-hosts an event with UCS titled, "Holding Fossil Fuel Companies Liable for the Climate Change Harms in Colorado" at the University of Colorado School of Law with speakers including David Bookbinder and Marco Simons, general counsel for EarthRights International.</p> <p>May 3, 2019: The Center for Climate Integrity hosts a climate litigation event titled "Climate Change Science & Litigation: Communities Go to Court to Recover Costs of the Climate Crisis" at the University of Hawaii's School of Law with Sher Edling's Vic Sher and UCLA law school professor Ann Carlson.</p> <p>May 6, 2019: Fort Lauderdale city attorney Alain Boleau told the <i>Florida Record</i>, "We have no intention of filing a lawsuit," following lobbying efforts by Institute for Governance & Sustainable Development (IGSD), who was represented by Miami Beach lobbyist, Seth Platt, of LSI Partners.</p> <p>2020: February 21, 2020: In Hawaii, the Maui County Council unanimously approves Mayor Vic-torino's request to authorize outside counsel to file a lawsuit against energy manufacturers for what he called "mounting impacts of climate change and rising sea levels."</p> <p>March 9, 2020: Represented by Sher Edling, Honolulu files a public nuisance climate change lawsuit against energy manufacturers.</p> <p>May 26, 2020: The Ninth Circuit administers rulings on the California public nuisance cases, moving the San Francisco and Oakland case back to federal court and affirming a lower court's ruling deciding that the San Mateo consolidated cases can proceed in California state court.</p>
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PHASE 4 A SHIFTING STRATEGY FOCUSED ON ALLEGED DECEPTION – ROUND 3 (2018 – PRESENT)

After the dismissal of several Phase 3 lawsuits, plaintiffs have shifted tactics and begun focusing their arguments on allegations of deception, misrepresentation, or wrongdoing, rather than damages or public nuisance. While such allegations have been included in some of the earlier public nuisance suits, such as those filed by Baltimore and Rhode Island, they haven't been the primary claims brought against the defendants. This change in strategy may signal that climate litigation proponents are finally accepting that their public nuisance claims do not hold up in court. This being the case, just as they did from Common Law Tort Litigation Round 1 to Common Law Tort Litigation Round 2, they are pivoting in an attempt to keep their politically-motivated lawsuits alive.

<p>October 24, 2018: Then-NYAG Barbara Underwood files a lawsuit claiming that ExxonMobil misrepresented how it accounts for the potential future costs of climate policies to its investors.</p> <p>October 25, 2018: Massachusetts Attorney General Maura Healey sues ExxonMobil, alleging the company deceived investors and consumers about the climate-related risks to its business and how its fossil fuel products contribute to climate change, respectively.</p> <p>December 10, 2019: New York Supreme Court Justice Barry Ostrager rules in favor of ExxonMobil in the New York Attorney General's securities fraud lawsuit against the company, ending a four-plus year inquiry into the company.</p> <p>2020: June 5, 2020: The Massachusetts Attorney General files an amended complaint in its lawsuit against ExxonMobil, narrowing its case to eliminate the investor deception claim that was tried and failed in the New York Attorney General's case.</p>	<p>June 18, 2020: A Texas appellate court dismisses ExxonMobil's petition seeking to depose Matt Pawa and the California public officials suing the company for public nuisance, but refers to those lawsuits as "an ugly tool" and deemed them "lawfare."</p> <p>June 24, 2020: Minnesota Attorney General Keith Ellison sues energy manufacturers, alleging that they misrepresented the impacts that their products had on climate change to Minnesota consumers.</p> <p>June 25, 2020: Washington, DC Attorney General Karl Racine sues energy manufacturers, alleging that they misrepresented the impacts that their products had on climate change to District of Columbia consumers.</p> <p>September 2, 2020: The City of Hoboken, New Jersey sues energy manufacturers, alleging they deceived the public over the role that burning fossil fuels play in climate change, along with claims of public and private nuisance, trespass, and negligence.</p>	<p>September 9, 2020: Represented by Sher Edling, the City of Charleston, South Carolina sues energy manufacturers for allegedly misleading the public about the impacts of fossil fuels on climate change, along with public and private nuisance claims, among others.</p> <p>September 10, 2020: Represented by Sher Edling, Delaware Attorney General Kathy Jennings sues energy manufacturers, alleging that they misrepresented the impacts that their products had on climate change to the public, along with negligent failure to warn and public nuisance claims, among others.</p> <p>September 14, 2020: Connecticut Attorney General William Tong sues ExxonMobil for allegedly deceiving the public over the role that burning fossil fuels play in climate change.</p>
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