

## Climate Liability Cases ‘As American As Apple Pie,’ Experts Argue

January 26, 2018

By Dana Drugmand

From severe droughts and recent mega-wildfires to melting snowpack and coastal flooding, climate change impacts are already devastating the state of California. Now, the Golden State is at the forefront of new climate liability lawsuits against the fossil fuel industry—litigation that has begun to change the conversation about how climate change should be addressed.

Climate lawsuits are not new, with examples stretching back to the George W. Bush administration, but the latest batch have a greater chance of succeeding, said Ann Carlson, professor of environmental law at the Emmett Institute on Climate Change and the Environment at UCLA School of Law. She and several other panelists spoke at a timely discussion Thursday at UCLA co-sponsored by the Union of Concerned Scientists (UCS), [“Holding Fossil Fuel Companies Liable for Climate Change Harms in California.”](#)

And while opponents of these suits often argue that the courts are the wrong place to deal with an issue like climate change, the panelists said it is the proper venue when the legislative and executive branches of government fail to act.

“This is as American as apple pie. This is part of our system and we’ve been doing this for a very long time,” said Ken Kimmell, president of UCS, in regards to using the courts to hold industry accountable and effect social change. “I do believe these lawsuits will continue to cause pressure on these companies.”

Although New York City caused a splash by [filing a lawsuit](#) against the largest oil companies last week, the heart of this movement is on the West Coast.

“California is really the epicenter of this new approach to holding fossil fuel companies accountable for climate change,” Peter Frumhoff, director of science and policy and chief climate scientist at UCS told the audience.

A handful of cities and counties in the state have filed suit against fossil fuel companies so far. The counties of Marin and San Mateo and the city of Imperial Beach last July sued 37 companies citing damages from sea level rise. San Francisco and Oakland followed in September suing five of the largest oil companies. The city and county of Santa Cruz filed suit in December against 29 fossil companies for a wider range of climate impacts, and on Monday, the city of Richmond did the same.

The lawsuits are based on public nuisance claims and some (except for San Francisco and Oakland) also bring product liability based claims. In all of the cases, the underlying logic is that the fossil fuel companies not only bear distinct responsibility for causing the problem, but they also had knowledge early on about the harm their product would cause and yet downplayed the risk and worked to promote misinformation to the public for decades.

The evidence supporting this argument has become much more solid in recent years. For one, the science connecting the emissions to the harm is a lot stronger. Recent studies have shown that a majority of historical carbon and methane emissions can be traced to just 90 companies. Secondly, Carlson explained, plaintiffs are now targeting the extractors of the product and there is growing evidence about what the companies knew, based largely on investigative reporting by InsideClimate News and the Los Angeles Times. These newer cases are also steered by sophisticated, experienced lawyers, she said.

“For those four reasons, I have some real optimism that these lawsuits have a shot,” she said.

In his keynote remarks, environmental activist and author Bill McKibben cautioned that time is of the essence. “The only thing about legal approaches that worries me is the slowness,” he said. Nevertheless, he and other speakers emphasized the significance of these lawsuits in exerting pressure on the industry.

Beyond acting as a pressure point, the objective is ultimately to hold the fossil fuel companies accountable for their deceptive behavior and resulting climate

consequences. Corporate accountability is a key part of climate and environmental justice, several of the speakers pointed out.

Gladys Limon, executive director of California Environmental Justice Alliance, explained that low-income communities and communities of color are most at risk of impacts from climate change, yet they are often leading the fight on the frontlines. Governments, she said, should be stepping up to protect their citizens. “We need the sort of leadership that demands accountability from the oil industry,” she said.

Serge Dedina, mayor of Imperial Beach, has stepped into a leadership role. His city was the first to initiate these lawsuits, and he is not afraid to face a fight with the wealthy and powerful fossil fuel industry. “The real risk is not doing anything,” he said. “Climate instability means we cannot afford to wait.”

As a low-income, working-class city, Imperial Beach lacks the resources of wealthier cities to pay for the expense of climate impacts. “My city does not have hundreds of millions of dollars it needs to pay for this,” said Dedina. “These companies caused much of the problem and they should pay.”