COMPANIES

Energy groups to be sued over climate change

Activists hope oil and gas producers will be forced to make settlements similar to those of tobacco industry

LESLIE HOOK — ENVIRONMENT AND CLEAN ENERGY CORRESPONDENT

Fossil fuel companies are already grappling with the risks posed by climate change, from the physical threats of extreme weather to the challenge of switching to cleaner energy. Now they have a new item rising up their list of worries: liability lawsuits.

Over the past two years, a growing number of legal cases in the US — brought by cities, counties, and the State of Rhode Island — are seeking damages from energy companies for a litany of climate-related problems.

Baltimore wants compensation for the cost of retrofitting storm drains to prepare for worsening storms. San Francisco says it will cost $5bn to upgrade it's sea wall to prepare for higher water levels. Meanwhile, Rhode Island expects coastal properties worth $3.6bn to be under threat by the end of the century.

Taken together, these lawsuits amount to a legal onslaught that climate activists hope will have a profound financial impact on oil and gas producers, by imposing huge penalties. The example they draw on is the years of litigation against tobacco companies that culminated in a settlement guaranteeing $206bn in payments to 46 US states over the first 25 years.

Sheldon Whitehouse, a Democratic senator from Rhode Island known for his climate activism, said the threat of litigation is a big worry for oil companies at the moment. "They are frightened at the prospect of liability at what they have done, and they are scared of courts."

> 'They are frightened at the prospect of liability at what they have done, and they are scared of courts'

He said the comparison with the tobacco lawsuits was apt. "If you . . . pop out the word tobacco, and put in the word fossil fuels; pop out the word health, and put in environmental harms. The complaint writes itself," he said.

One crucial difference, however, is that the climate cases are not yet on the scale of the tobacco litigation — none of the lawsuits has succeeded yet, and several have been thrown out.

At present there are more than a dozen climate liability cases under way in the US: 10 brought by counties, four brought by big cities (New York City, San Francisco, Oakland, Baltimore) and one by a state (Rhode Island). The next cities to file climate-related lawsuits are likely to be Honolulu and Washington DC, which has already put out a call for lawyers.

However the energy companies, and the lobby groups that represent them, are sceptical that these cases have merit.

"There has been a long history of this litigation that has not been successful, and for good reason," said Phil Goldberg, special counsel at the National Association of Manufacturers, a lobby group in DC whose members include fossil fuel companies.

"The fundamental flaw with these lawsuits is that the companies didn't do anything wrong . . . they are selling a useful product," Mr Goldberg added. "The whole thing is just a red herring."

But he stops short of dismissing the lawsuits altogether. "Anytime you are sued, you take it seriously," he said. The growing number of cases has prompted the association to set up a new wing — the Manufacturers' Accountability Project — to address them.

At the same time, some energy companies, including Shell and BP, have poured millions of dollars into lobbying for a new carbon tax bill that would also include a liability waiver for fossil fuel products sold in the past, which would make most of these lawsuits vanish.

While the details of each case vary, the broad thrust is similar: to extract compensation from oil and gas producers to cover the cost of adapting to the effects of climate change.

Most lawsuits name the biggest producers — such as Exxon, BP, ConocoPhillips, Royal Dutch Shell and Chevron — as defendants, though the number of companies named ranges from five to 37.

"These are lawsuits by injured public entities against specific wrongdoing companies, seeking money damages . . . these are about compensation for past behaviour," said Vic Sher, partner at Sher Edling, a private law firm that represents plaintiffs in 11 of the cases. "The cost of dealing with climate change to communities is just enormous."

The history of previous climate liability lawsuits in the US suggests today's cases may face an uphill battle. In several landmark cases over the past decade, judges sided with the oil companies, including one key ruling in federal court that corporations cannot be held liable for their greenhouse gas emissions.

In one high-profile lawsuit a decade ago, the Alaskan village of Kivalina asked oil producers to pay for the cost of relocating the village because it was threatened by rising sea levels. The court ultimately ruled against Kivalina, saying the case could not be heard under federal common law.

However, climate lawyers say that things have changed with the latest batch of cases.

Not only have these cases been filed in state rather than federal courts (which means the ruling in Kivalina and other similar cases are not directly applicable) but they also benefit from advances in the scientific understanding of climate change and its impact, they say.

"The new developments are the scientific ones," said Mr Sher. "What is new is our ability to quantify the relationship between emissions and climate change-related impacts, like sea-level rise — and to attribute the emissions to particular companies."

Progress so far has been mixed: the question of whether the claims should be heard in state or federal courts has occupied much of the proceedings. The lawsuits brought by San Francisco, Oakland and New York City are under appeal, having initially been thrown out.

An additional challenge for plaintiffs is that, because fossil fuels have been the engine of so much economic activity, it may be difficult to establish that energy companies, rather than the consumers, should bear responsibility.

However, activists say that the companies' knowledge of climate change and their failure to warn the public about the impact of the oil and gas they were selling creates liabilities.

The cases are too preliminary to cite dollar figures for damages, while estimates of the cost of climate change across the US run into the trillions of dollars.

> 'The fundamental flaw with these lawsuits is that the companies didn't do anything wrong'

At the same time, energy companies also face separate accusations of deceiving investors over climate risks.

Last year, the state of New York sued ExxonMobil, alleging that it misled investors — a charge the company vigorously rejects. The case is being watched closely by the rest of the industry, particularly because New York's anti-fraud law, known as the Martin Act, is among the toughest in the country.

As for the companies, they point out that co-operation, not confrontation, would be more effective for addressing climate change.

Those named as defendants say the lawsuits are without merit, misguided, and not constructive.

"We do not believe the courtroom is the right venue to address the global challenge of climate change," said Shell, while Exxon commented that. "Addressing climate change in a meaningful way requires global participation and actions by governments, corporations and consumers."

Chevron said that similar suits had been "consistently dismissed" and that it was focused on "real solutions and meaningful actions such as investing in technology and low carbon business opportunities".

Despite the challenges, the plaintiffs do have one advantage: whereas the energy companies have to fight every case, the plaintiffs only have to win one, said Richard Wiles, executive director of the Center for Climate Integrity, a non-profit that supports plaintiffs in climate litigation.

"The real strategy is, you have to file more cases in more places," he explained. "If we win one, that creates the precedent, then we begin the cascade. That is how tobacco was won."

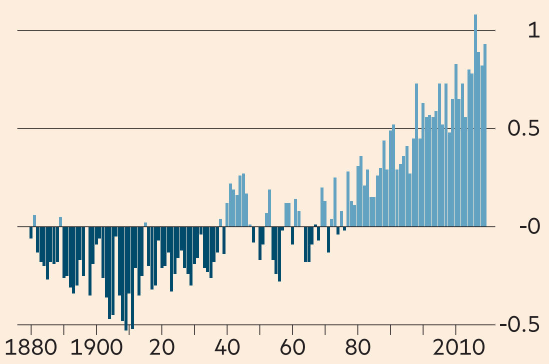
Additional reporting by Anjli Raval.

Weather warning

Wave of claims: the lawsuits amount to a legal onslaught that climate activists hope will have a profound financial impact on oil and gas producers, by imposing huge penalties — Robert Galbraith/Reuters

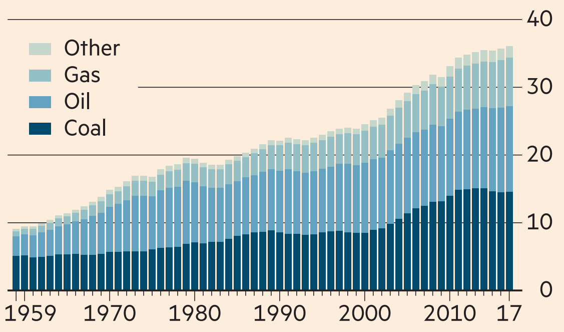
Global temperatures getting hotter

Land and ocean temperature compared with 1901 to 2000 average (°C)



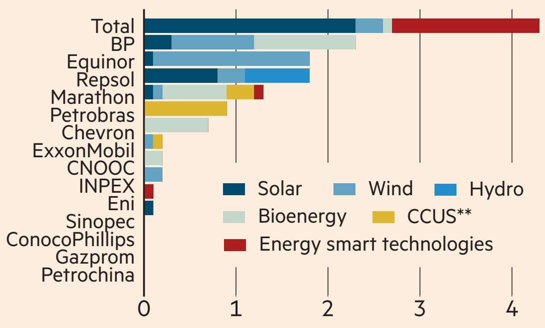
CO2 emissions from fossil fuels

Tonnes (bn)



Investment in low carbon energy remains poor for oil majors

Disclosed low-carbon investment as a proportion of total capital spend, 2010 to Q3 2018 (%)



Sources: National Centers for Environmental Information; Global Carbon Project; CDP

* Includes Asset Finance, M&A and Venture Capital spend ** Carbon capture, utilisation and storage

FT

More on ft.com
For the latest news, comment and analysis on climate change, go to ft.com/climate

Insurance

Munich Re chief calls for higher carbon costs

OLAF STORBECK — FRANKFURT

Munich Re, the world's largest reinsurer, is urging European policymakers to increase the cost of emitting carbon fivefold in the region to tackle climate change.

Joachim Wenning, the German group's chief executive, warned targets set out on climate change in the Paris accord, which aims to phase out fossil fuels by 2050, could be missed unless action is taken.

"On the current trajectory of carbon emissions, we have to expect an increase of global temperatures by 3.5C by the end of the century," Mr Wenning warned, adding that this would trigger an "extreme" increase in human misery.

"The property damage is [already] bad enough, but the toll of human victims would rise significantly," he added, stressing that entire coastal areas would be flooded while other regions would suffer permanent droughts.

Munich Re, which is exposed to natural catastrophes caused by extreme weather events such as hurricanes and floods, has been warning about climate change since the early 1970s.

In the fourth quarter of 2018 alone, a typhoon in Asia and two wildfires in California triggered a 56 per cent year-on-year drop in Munich Re's quarterly profits.

Mr Wenning called for the introduction of a meaningful price on carbon emissions that create financial incentives to accelerate the switch from fossil fuel to renewables. "This can be either done by emissions trading or by a tax on carbon," he said.

He added that the cost of emitting carbon for companies in Europe's emission trading system should be similar to Sweden's tax regime, which he described as "appropriate".

This puts a tax of €115 on every tonne of carbon dioxide emitted compared with Europe's trading system, which currently uses a market-based system that charges €24 per tonne emitted.

> 'We have to expect an increase of global temperatures by 3.5C by the end of the century'

"The CO_2 price needs to be high," said Mr Wenning, adding that the use of fossil energy needed to be made economically unviable for the biggest consumers, such as steelmakers, the chemical industry and transport.

Mr Wenning's proposal is at odds with the positions of Germany's Christian Democratic Union, the largest party in the governing coalition.

Party leader Annegret Kramp-Karrenbauer, the potential successor of chancellor Angela Merkel, has dismissed a carbon levy.

The Munich Re chief executive acknowledged that a price on carbon as high as necessary to fight climate change would cost jobs, as some carbon-heavy companies would probably go out of business.

"A responsible government needs to keep these effects in mind," he said.

The Munich-based company, which has 41,000 employees and €49.1bn in gross premiums written, says it has lowered its own carbon footprint per employee by 44 per cent over the past decade.

It has stopped investing in bonds and shares of coal-heavy companies and was the first insurer to underwrite long-term performance insurance polices for batteries.

Munich Re has lowered its carbon footprint 44% over the past decade