

Turning up the heat: Corporate legal accountability for climate change



Corporate Legal Accountability Annual Briefing
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EXECUTIVE SUMMARY

Climate change is an extraordinary threat to human rights. The worsening harm of climate change on marginalised communities, especially in the global south, epitomises the injustice of corporate human rights abuse. Just 100 major companies have been linked to, and profited from, over 70% of global CO₂ emissions since 1988, the year in which human-induced climate change was officially recognised. There is also evidence that for decades many of these companies knew about the climate impacts of their operations, failed to act, and misinformed the public and investors. Meanwhile, the poorest communities in the world suffer from the slow accretion of a shifting climate, alongside the more visible disasters like cyclones, floods, heatwaves and wildfires.

"The big polluters who have contributed to climate change should now contribute to the solutions of our problems."

Saul Luciano Lliuya, Peruvian farmer bringing a claim against RWE

Climate litigation has been steadily rising for the past decade across jurisdictions. In [early 2017](#), there were over 1,200 laws and policies related to climate change in 164 countries, while in 1997 there were only 60. In the USA, around 20 new climate lawsuits are now filed each year, up from just a couple in 2002. Outside the USA, 64 climate cases have been filed in the past 15 years, 21 of which have been filed since 2015.

Traditionally, these cases have been brought against governments, but there is now a steep rise in climate lawsuits brought directly against companies: in the USA seven climate lawsuits were filed against companies in 2017, and six had so far been filed by May 2018. This rise can be explained by advancements in science, lessons learnt from similar litigation efforts, revelations into companies' long-standing climate knowledge and deception efforts, increased public mobilisation, and collaboration between cities, lawyers, scientists and activists. At a time when both governments and companies have repeatedly failed to take bold steps to adequately combat climate change, strategic litigation on climate change is a beacon of hope for the climate and broader corporate accountability movement.

"The ultimate goal of almost all litigation towards climate justice is to establish global political responsibility that makes such lawsuits unnecessary."

Roxana Baldrich, Policy Advisor at Germanwatch

As of May 2018, there were 14 ongoing climate change lawsuits against fossil fuel companies, and one notice of intention to file a claim against an oil company had been presented. Litigation is one of the many different tools in the growing movement demanding corporate accountability in relation to climate change, which has involved collaboration between scientists, lawyers, and human rights and climate activists, who continue to integrate their strategies.

However, none of the cases have so far reached the merits stage; these legal avenues and arguments are being tested and the jury is out on their effectiveness, efficacy, and impact. This briefing examines the growing pace of climate change litigation against companies and the opportunities and challenges ahead. Key takeaways are:

- **Scientific research has bolstered legal claims:** Research attributing shares of global emissions to specific companies has facilitated legal cases seeking to hold private companies liable for their role in climate change. So too has evidence that companies were aware of their contribution to climate change, and its impacts, and worked to deceive or misinform the public and investors.
- **Climate litigation is used as a tool for the broader climate justice movement:** Lawsuits mostly look to recover the costs for climate adaptation and resilience, but they are also used as a strategic tool to hold emitters accountable and to prompt more responsible climate policies by companies. Litigation is complementary to non-judicial approaches, which are important levers to pressure companies to be more transparent and take bolder steps to contribute to tackling global warming. Litigation may also encourage further climate policy and regulatory measures both at the national and international levels.
- **Human rights and environmental lawyers can learn from each other:** Environmental lawyers have pioneered and mastered approaches on climate justice that human rights lawyers can learn from. Equally, human rights legal considerations can play a powerful complementary role in environmental litigation. The use of both human rights and environmental law in establishing legal arguments reinforces the value of strong collaboration between advocates from both spheres.
- **Novel approaches and collaborations for climate justice are emerging,** including through shareholder activism, litigation, and legislative efforts, as well as attempts to establish fiduciary obligations of company officials and/or third-party liability of insurers.
- **Carbon majors are on the offensive:** These companies' responses to legal action have traditionally been aggressive and well-financed, and climate litigation is no different. Plaintiffs are likely to face long and costly proceedings, and can expect combative responses by defendant companies. Restrictions on civic freedoms, in particular Strategic Lawsuits Against Public Participation (SLAPPs), also threaten environmental organizations, activists, journalists and scientists.

This Annual Briefing is intended to be a catalyst for further action on corporate legal accountability for climate change. Many of the opportunities and challenges highlighted are in fact shared by both climate justice advocates and human rights advocates.

Please [get in touch with us](#) so we can help share the word on your own efforts, invite you to join future conversations, and explore opportunities for collaboration.



INTRODUCTION:

As an organization dedicated to advancing human rights in business, we seek to counter corporate impunity for human rights abuses. Our [Corporate Legal Accountability \(CLA\) program](#), which highlights significant business and human rights lawsuits in all parts of the world, is one of our means towards achieving this goal. We view lawsuits both as a means by which communities and workers assert their power, and as a key driver of positive change in corporate behaviour.

A vital part of our corporate legal accountability work is tracking lawsuits that address the human rights impacts of companies. Every year, we publish an [Annual Briefing](#) to highlight the work of our allies in legal practice, help share their experiences and learnings with other advocates and practitioners, and spark discussion, debate, and further action.

Climate change is one of the greatest human rights challenges of our time. The increasing impact of climate change on marginalised communities, especially in the global south, epitomises the injustice of corporate human rights abuses. Over 70% of CO₂ emissions since 1988, the year in which human-induced climate change was officially recognised, have been linked to just 100 major companies. Meanwhile, the poorest communities in the world suffer from the damage caused by cyclones, floods, heatwaves and wildfires.

Efforts to hold companies accountable for their impacts in all corners of the world are at the heart of corporate legal accountability for human rights abuses. Climate litigation has been

growing in the past decades. In the USA for example, around 20 new climate lawsuits are now filed each year, up from a couple in 2002. Outside of the US, 64 climate cases have been filed in the past 15 years, 21 of which have been lodged since 2015. Most [climate change related litigation](#) has been directed at governments, for example for failure to regulate emissions and for granting licenses for carbon-intensive activities. But in the past three years, there has been a dramatic increase in cases brought directly against companies, in relation to their contribution to climate change. In 2017, seven climate lawsuits were filed in the USA against companies, and six have so far been filed this year. Climate change litigation has been at the heart of innovative corporate legal accountability efforts in the past year.

This Annual Briefing explores the growing trend of climate change litigation against companies. For the purposes of this briefing, climate change litigation refers to cases “brought before administrative, judicial or other investigatory bodies that raise issues of law or fact regarding the science of climate change and climate change mitigation and adaptation efforts.”¹

In this briefing, we will provide an overview of attempts to hold companies accountable in court for their climate impacts, highlight where further opportunities lie, and explore the challenges that climate litigators face. This briefing seeks to feed conversations within the growing movement to hold corporations accountable for their role in climate change.

1. [The Status of Climate Change Litigation, A Global Review](#), United Nations Environment Programme, May 2017



BACKGROUND:

In December 2017, over 15,000 scientists from 185 countries [rang the alarm bells](#) and called for immediate action to tackle the “current trajectory of potentially catastrophic climate change”. [Scientists have linked](#) increasing [extreme weather](#) events to human-caused climate change. Citizens all over the world are becoming [aware of the risks](#) and businesses’ role in accelerated climate impacts. More are demanding bold action to tackle global warming.

Governments have been implementing measures to adapt to and mitigate the effects of climate change for years. But such efforts have been too timid, based on political feasibility rather than targets determined through scientific consensus. [The Paris Agreement](#), considered to be the boldest international climate agreement to date, does not set any legal obligations to reduce greenhouse gas (GHG) emissions. The majority of signatories are [already failing](#) to live up to their voluntary pledges, considered too low to keep global warming to safe levels in the first place. [Some countries](#) with fast-growing economies and populations are in fact planning to increase investments in fossil fuels. Some governments are dismantling their climate policies, like the USA which announced its intention to withdraw from the Paris Agreement and engaged in a [wave of deregulation](#).

Insufficient state action to address climate change at international and national levels, has led citizens, NGOs and cities to [the courts](#). In the past decade, the number of [climate cases](#) filed has [increased](#), and so has the number of countries where cases have been filed. In the [vast majority of cases](#), the primary targets of climate litigation are governments, which can increasingly be held to account in courts notably because of a [boom in climate laws, policies and commitments](#), both at national and the international levels. Among lawsuits aiming to prompt, strengthen or enforce policies to

fight climate change, most seek to challenge a particular project or activity deemed to aggravate climate change, such as in the landmark [Colombian youth case](#) related to deforestation in the Amazon or the [case against the Norwegian government](#) regarding oil and gas extraction licenses in the Arctic. Courts are [also used](#) to hold governments to their legislative and policy commitments and establish liability for failures to adapt to climate change, such as in the [Urgenda Foundation v. Kingdom of the Netherlands](#) case, and to apply the public trust doctrine – which posits that certain natural resources must remain in public hands to be protected for the public’s use - to climate change, such as in [Juliana v. US](#).

Companies and [investors](#) are also [taking action](#) to tackle climate change, for example through measures to reduce emissions through energy conservation, by shifting to renewable energy sources, and by supporting adaptation efforts and responsible climate policies. Leading companies are often described as ahead of governments in taking climate action. These steps are nonetheless criticised for being too mild and disproportionate to the urgency and scope of the issue. There is increasing pressure for real corporate accountability in relation to climate change. Studies quantifying fossil fuel companies’ responsibility for total greenhouse gas (GHG) emissions and revelations of companies’ long-standing knowledge of their impacts, and subsequent inaction and deception have strengthened this momentum. Over the past three years there has been a dramatic increase in the number of lawsuits brought against companies, and fossil fuel companies. Climate litigation targeting fossil fuel companies is a growing trend and it is likely to remain as one as more groups see it as a tool to prompt shifts among the companies that have managed to avoid their share of responsibility for the accelerated impacts of climate change.



I. THE MOMENTUM FOR CLIMATE LITIGATION AGAINST COMPANIES

ADVANCEMENTS IN SCIENCE AS A BASIS FOR ESTABLISHING LEGAL CLAIMS

Tremendous advances in science have facilitated legal cases to hold private companies liable for their role in climate change. Human-made GHG emissions, in particular through fossil fuel combustion, are known to be one of the main drivers for climate change. Scientists are now able to determine the share of GHG emitted by fossil fuel companies, and can determine which are the most polluting ones. The groundbreaking [Carbon Majors study](#), first published by Richard Heede in 2013, quantified the emissions from the products of 50 leading investor-owned, 31 state-owned, and 9 nation-state producers of oil, natural gas, coal, and cement from 1854 to 2010. The 90 biggest emitters, including Chevron, ExxonMobil, BP and Shell, were shown to be responsible for 63% of the CO₂ and methane emitted between 1751 and 2010. Heede also found that over half of these emissions were released in the atmosphere after 1986. The Carbon Major study was the first research allocating responsibilities for global warming to private actors and de facto paved the way for claims to be brought against those companies. Subsequent studies have [demonstrated](#) that 100 operating fossil fuel companies are responsible for over 70% of industrial GHG emissions since 1988, the year in which human-induced climate change was officially recognised.

Advances in extreme event attribution have established causal links between global warming and extreme weather events, with the potential to open new grounds for establishing liability for damages linked to disasters such as hurricanes and droughts. A 2017 Union of Concerned Scientists-led [study](#) linked investor-owned carbon producers' emissions to climate change-related impacts, such as rise in global

sea levels and global average surface temperature, phenomena known to drive climate disasters. The study [found](#) that emissions from the manufacture, extraction, and burning of products marketed by 90 fossil fuel companies and cement manufacturers contributed to nearly half of the rise in global average surface temperature and to almost 30% of the rise in global sea level between 1880 and 2010.

Improvements in climate attribution have also allowed scientists to better foresee climatic events and patterns, and to quantify their real or projected impacts including in human and financial terms. Quantifying the costs of responding to damages linked to climate change-induced sea level rise and droughts, or the number of deaths caused by a heat wave, as well as to project the costs to prepare and adapt for future impacts, has informed several legal claims for damages being brought in the United States. The ability to foresee extreme weather events can also engage the [liability of different actors](#) deemed to have a duty of care or specific knowledge about climate change-related risks in many different legal systems.

Climate science nonetheless continues to be strongly challenged, including in [current climate cases](#) against companies. Scientific research on climate science is increasingly under attack, including through government action such as [in the USA](#).

ALLEGED KNOWLEDGE AND DECEPTION ON CLIMATE SCIENCE

In its 2017 [Smoke and Fumes](#) report, the Center for International Environmental Law (CIEL) argued that the laws of tort, the law of noncontractual responsibility in civil jurisdictions, and international human rights law provide a legal framework for holding fossil fuel companies

accountable for climate change. Under this analysis, fossil fuel companies can be held responsible if a) they had the ability to foresee harm, and b) they had the ability and opportunity to avoid or minimize such harm.

Evidence related to the time frame and extent of fossil fuel companies' knowledge about their products' contribution to climate change, and to efforts to misinform and deceive the general public and investors, have made groundbreaking news in recent years. According to [CIEL's report](#), industry associations like the American Petroleum Institute (API), and individual fossil fuel companies, knew or should have known about the risks posed by climate change and about their product's role in exacerbating those risks for at least 60 years. The report argues that leading oil companies and industry associations had the opportunity and necessary expertise to understand climate science and reduce risks, and were notified on several occasions -including by their own scientists - of the potential severity of climate risks. Yet, they used their political influence to resist regulation to address climate change and fund misinformation campaigns, while protecting their own assets from climate risks. Reporting by [Inside Climate News](#) and [The Los Angeles Times](#) explored the discrepancy between what ExxonMobil knew internally and what it communicated externally since the 1980s. In April 2018, [leaks](#) and [reports](#) showed that Shell understood the risks associated to climate change and was aware of its contribution to total GHG emissions since 1988. The Union of Concerned Scientists' 2015 [Climate Deception Dossiers](#) presented evidence of a coordinated climate deception campaign by several fossil fuel companies, while the [DeSmog Climate Disinformation Database](#) registers individuals and organizations including companies that have delayed and distracted the public and elected leaders from taking needed action to fight global warming.

The fossil fuel industry and individual companies' alleged knowledge and deception is mentioned in most of the existing legal initiatives against them (see section II), and further investigation into these issues could prompt or add weight to future claims. These revelations prompted [several US attorneys general](#) to investigate whether some of these companies lied to the public and investors about the risks of climate

change (see section IV), and also prompted lawsuits by the [Conservation Law Foundation](#) against [Exxon](#) and [Shell](#) alleging climate deceit and violations of the Clean Water Act.

PREVIOUS LITIGATION EFFORTS

In the USA, previous litigation efforts against other industries such as the [asbestos](#) and [tobacco](#) industries have informed litigation strategies against fossil fuel companies. Over 300 lawsuits were filed over 40 years against tobacco companies [under various legal theories](#). While the first two [waves of lawsuits](#) were unsuccessful, the leak of the [Cigarette Papers](#) in the late 1990s, which revealed what cigarette makers knew, what they could have done, and how they spread doubt and targeted young consumers, marked a turning point. A series of class action lawsuits, investigations by US attorneys general and a US Department of Justice [lawsuit](#), under the Racketeer Influenced and Corrupt Organisations Act, followed suit. This led to a multi-billion [Master Settlement Agreement](#) and [new limitations on tobacco marketing](#). Research has suggested that the oil industry's misinformation strategies were [similar](#) to that of the tobacco industry, leading some to see [potential for similar litigation](#) against fossil fuel companies including under racketeering charges. Other experts see potential parallels based on the [public nature of the costs](#) incurred both as a result of tobacco-related disease and as a result of the mitigation and adaptation costs triggered by climate change, and argue that similar public cost recovery legislation could be implemented for climate change-related expenses. A recent [study](#) also argued that, as in tobacco litigation, citing public health concerns in climate lawsuits could help persuade courts and ultimately influence climate policy-making.

Several public nuisance claims in the USA have also set the tone for ongoing climate change litigation against companies (see part 2). Among them is an 18-year-old California case in which 10 cities and counties are seeking to hold three paint manufacturers liable for continuing to use [lead paint](#) in homes. In 2014, the [judges ruled](#) that the marketing of lead paint created a public nuisance and ordered the paint companies to pay a combined \$1.15 billion for a lead paint abatement program, a verdict that defendants intend to challenge in the US Supreme Court. The public nuisance doctrine,

which allows someone to sue for obstruction of a public right, had rarely been relied upon in relation to health and environmental issues. Public nuisance claims against lead paint manufacturers had in fact failed in several other states, but the Californian paint manufacturers' promotion of lead paint, whilst also having knowledge of the health hazards linked to lead, contributed to concluding that they were responsible.

The 2008 [Kivalina case](#) is a landmark climate lawsuit which [laid the grounds](#) for future litigation against fossil fuel companies. Under the public nuisance doctrine, Kivalina residents in Alaska argued that fossil fuel companies' contribution to global warming interfered with their rights to use and enjoy public and private property, and sought to recover monetary damages for the cost of relocating their entire village. While it was not examined by the court, plaintiffs argued that certain defendants conspired to suppress public awareness of the link between GHG emissions and global warming. The district court initially rejected the claim based on the political question doctrine (that the issue at hand was to be determined by the legislature or the executive and not by the courts) and based on lack of standing (at the time plaintiffs were unable to show that the defendants had directly caused harm). The Kivalina case was ultimately [dismissed](#) based on the "displacement doctrine", under which the Environment Protection Agency's Clean Air Act displaced the federal common law nuisance claim.

Similar reasoning was held in [American Electric Power Company, Inc. v. Connecticut](#) in which plaintiffs sought to limit power companies' GHG emissions which they claimed contributed to the public nuisance of climate change. Experts argue that despite dismissal, both these cases have nonetheless left the question of state common law liability open, and one key [lesson learned](#) seems to revolve around the desirability of presenting cases at the state level, as demonstrated by California claimants' current efforts to keep proceedings in state courts (see below).

As for non-US climate litigation, Friends of the Earth Netherlands (Milieudefensie) also [cited](#) the [Urgenda case](#) against the Dutch government as having set positive precedents for its projected lawsuit against Shell in relation to questions of standing and proportional

liability. Laurie Van der Burg (Researcher and Campaigner at Milieudefensie) saw the Hague court's decision that emissions of the Dutch state were significant enough to prove responsibility as promising, given that the emissions attributable to Shell are proportionally higher. According to experts, the finding of state liability in this case could also be applied to corporate liability.

INCREASED MOBILISATION AND INFORMATION-SHARING

Citizens around the world are increasingly mobilising to demand concrete action on climate change, from governments and companies alike. According to Michael Burger, Executive Director of the Sabin Center for Climate Change Law, the recent climate lawsuits introduced in the USA are likely a direct result of the election of Donald Trump. They reflect a frustration with the absence of federal leadership on climate, and with the continuing recalcitrance of the fossil fuel industry. Recent revelations around fossil fuel companies' deception have led to mounting public discontent and clear demands for accountability and redress, such as through the [#ExxonKnew](#) campaign. Petitions in support of climate lawsuits are on the increase, both in cases against governments such as in [The Peoples vs Arctic Oil](#) case against the Norwegian government which gathered more than 500,000 signatures, and against companies like [The Peoples vs Shell](#) petition through which over 11,000 citizens have agreed to be co-plaintiffs in a future lawsuit. NGOs, think tanks, academic centres, and individual experts have also supported climate litigation in various ways: supporting press and publicity, such as [Germanwatch](#) in [Luciano Lliuya v. RWE AG](#); providing pro bono representation, such as [EarthRights International](#) (ERI) in the Colorado case; submitting extensive [joint amicus curiae](#) or requesting investigations, such as Greenpeace Southeast Asia and the Philippine Rural Reconstruction Movement in the Philippines Commission on Human Rights' inquiry. Climate litigation against companies is also bolstered by rising collaborations and mutually reinforcing strategies between human rights and climate activists, progressive cities and counties, and expert litigators.

Lawyers and advocates around the world are also developing practical tools on corporate

legal accountability regarding climate change. For example, [E-LAW's](#) portal on [Climate Litigation Strategies](#) tracks relevant decisions from around the world, and its [Climate Litigation Primer](#) is specifically directed at lawyers thinking about taking on climate cases. The [Climate Law in Our Hands](#) project provides resources and encourages British Columbia communities in Canada to write to fossil fuel companies to [demand accountability, evaluate and plan](#) for climate impacts, and to ask local governments to file a [class action lawsuit](#) against the largest “fossil fuel polluters” in relation to adaptation costs. The [Taking Climate Justice into our own Hands](#) report explains how governments anywhere can use their own laws to hold fossil fuel companies accountable.

CHALLENGES TO CLIMATE CHANGE LITIGATION

Similar to lawsuits against tobacco companies, an industry famous for its scorched-earth tactics, issues of length, cost, and combative legal strategies by defendants could represent [major challenges](#) for communities or governments attempting to sue fossil fuel companies in relation to climate change. In most EU countries for example, plaintiffs have to reimburse legal fees if they lose the claim. Crowdfunding is used as a way to support litigation costs both against [governments](#), such as in the [Portuguese children case](#) to be brought to the ECHR, as well as against companies, for example in the Luciano Lliuya v. RWE AG case. Some lawyers are moreover providing pro bono support to minimise the financial burden on claimants.

According to experts, claimants will face several legal challenges both at the preliminary and merits stages. Proving ‘causation’ for example will be an important hurdle, as claimants will have to demonstrate a causal link between harm caused by global climate change and defendants’ acts or omissions.

The Urgenda case marked a step forward in this regard, as the court recognised the link between the relatively small contribution of the Netherlands to the total of GHG emissions. Defendants in US lawsuits are already using some of the arguments made during previous climate change or similar proceedings, raising for example the [political doctrine question](#), the [relevance](#) of public nuisance, the issue of state jurisdiction, consumers’ responsibilities, or invoking violations of their right to [free speech](#).

Overall, similar to claims brought against governments, these lawsuits face the challenge of convincing courts they have the power and capacity to adjudicate on climate change, given that it involves complex scientific concepts and requires balancing competing environmental, social and economic priorities. However, in a recent [case](#), a New Zealand court found that climate change was justiciable, stating that: *“It may be appropriate for domestic courts to play a role in Government decision-making about climate change policy...Remedies are fashioned to ensure appropriate action is taken while leaving the policy choices about the content of that action to the appropriate state body.”*

Climate lawsuits against companies are likely to be challenged by different actors. In April 2018, fifteen US attorneys general filed a [friend-of-the-court brief](#) calling for the dismissal of the San Francisco and Oakland climate lawsuits, [arguing](#) that claimants’ legal arguments were not valid. In May 2018, the US government also [filed a brief](#) arguing that the lawsuits could interfere with the country's climate policies and energy needs. [Offensive legal strategies](#) and other efforts by fossil fuel companies and the industry are explored in section IV.



II. ACTIVE CLIMATE LAWSUITS AGAINST COMPANIES

As of May 2018, we tracked 14 active climate lawsuits against fossil fuel companies, and one notice of intention to file a claim against an oil company. This section analyses the main trends in these 15 cases, while the table on page 19 provides a summary of the details of the 14 active lawsuits. Other legal proceedings that are not lawsuits are analysed in section IV.

WHO ARE THE PLAINTIFFS?

Plaintiffs bringing climate claims against fossil fuel companies include individuals, civil society organizations, local governments, and cities, who are facing and/or will likely face the extreme impacts of climate change.

[Saúl Ananías Luciano Lliuya](#), a small-scale farmer and mountain guide from Peru, is the only individual whose case we track who brought a climate case against a company, in [Luciano Lliuya v. RWE AG](#). Mr Lliuya [claims](#) that his house, located in the city of Huaraz in Peru, is at imminent risk of being destroyed or damaged due to an outburst flood from the glacial Lake Palcacocha which is at risk of having blocks of melting glacial ice falling into the lake as a result of climate change.

In the USA, three counties and five cities in California, two counties and one city in Colorado, one county in Washington state, and New York City claim to be particularly vulnerable to the current and future impacts of climate change, and are suing fossil fuel companies and seeking damages for climate change-related injuries. The Californian plaintiffs are all situated on the coast and are therefore affected by sea level rise and extreme weather events such as floods. The Colorado plaintiffs

reside in the US interior and are subject to [temperature rise](#) leading to changing precipitation patterns, increase of wildfires and droughts, and earlier melting and reducing of snowpack. According to Earth Rights International, which provides pro bono representation in this case, the Colorado claimants are currently suffering these harms despite significant efforts, including dedicating large parts of their limited resources, to reduce their own greenhouse gas emissions.

These cities and counties have estimated the costs of responding and adapting to climate change, including in the form of repairs and investments in public infrastructure and roads, public health planning, wildfire prevention, water efficiency improvements and expert studies. The Colorado plaintiffs for example expect a bill of [over \\$100 million](#) in the next few decades, and [San Francisco](#) estimates that over \$10 billion worth of public property would be affected by sea-level rise. These local governments stress that taxpayers should not be the only ones shouldering these costs, but that those responsible, including fossil fuel companies, should pay their fair share.

Finally, the Dutch environmental organization Milieudefensie has sent a [notice of intent to sue](#) Shell in April 2018. Milieudefensie's organizational statutes indicate that it has a mission to defend the public interest, which gives it standing under Dutch law. It argues that Shell's policies in relation to climate change are inadequate and "constitute wrongful conduct vis-à-vis Milieudefensie and the public interests it represents". As of May 2018, over 7,100 citizens had signed the petition to be co-plaintiffs in this case.

2. [Anadarko](#), [Apache](#), [Arch Coal](#), [BP](#), [Chevron](#), [Citgo Petroleum](#), [ConocoPhillips](#), [Devon Energy](#), [Encana](#), [Eni](#), [ExxonMobil](#), [Hess Corporation](#), [Marathon Oil](#), [Marathon Petroleum](#), [Occidental Petroleum](#), [Peabody Energy](#), [Phillips 66](#), [Repsol](#), [Rio Tinto](#), [Shell](#), [Statoil](#), [Suncor](#), [Total](#), and [RWE](#)

WHO ARE THE DEFENDANTS?

The defendants in these lawsuits are oil, gas and coal corporate groups and companies² producing, selling and promoting fossil fuels, the burning of which causes GHG emissions which are known to be contributing to climate change. Studies have singled out these companies as being responsible for significant shares of total emissions and therefore as major climate change contributors. Five companies are [considered](#) to be the top five greenhouse gas emitters; BP, Chevron, ConocoPhillips, ExxonMobil and Shell. These companies are co-defendants in 10 of the 14 lawsuits we tracked, and ExxonMobil alone has been targeted in thirteen of them. [RWE](#), the sole defendant in [Luciano Lliuya v. RWE AG](#), is the single largest emitter in Europe.

Based on the recent [scientific research outlined above](#), complaints explicitly cite the share of total CO₂ emissions attributable to individual defendants, as well as how much they have contributed to measured climate change-related impacts such as increased global temperatures or sea-level rise. Milieudefensie for example [alleges](#) that Shell is responsible for 1.8% of the total increase in CO₂ in the atmosphere, 1.6% of the measured rise in global temperatures, and 1.4% of measured sea level rise. The counties and city in the [County of San Mateo v. Chevron Corp.](#) cases [allege](#) that the 37 companies they are suing were responsible for roughly 20% of total emissions from 1965 to 2015.

The majority of plaintiffs state that defendants have known or should have known for decades about their products' impacts on the climate and the associated risks and costs. Claimants add that despite having knowledge of and the capacity to mitigate these risks, defendants continued to and will continue to produce fossil fuels. Furthermore, plaintiffs point to the defendants' continued attempts to undermine and challenge climate science, as well as to mislead, defraud and spread doubt among the public about the harmful effects linked to their products.

WHERE WERE LAWSUITS FILED AND WHAT IS THE STATUS OF THESE CASES?

At the time of the writing of this report, none of the lawsuits tracked have been heard on merits.

[Luciano Lliuya v. RWE AG](#) was filed in November 2015 in the district court of Essen in Germany, where the defendant has its headquarters. In December 2016, the Essen court dismissed the claim, arguing that the alleged risk of flooding could not be linked to the defendant's emissions. In November 2017, the Regional High Court of Hamm reversed this decision and [allowed the case to proceed](#), ruling that "a private company is in principle responsible for its share in causing climate damages in other countries. This applies if concrete damages or risks for private persons or their property can partly be assigned to the activities of the relevant company". Klaus Milke, Chairman of the Board at Germanwatch, a non-profit which supports the case, described the Hamm high court's decision to allow the case to move forward as a "historic breakthrough... demonstrating that what was once an abstract risk is now an increasingly material and concrete litigation risk for carbon majors". If successful, the case [could open the door](#) for individual polluters to be held accountable by foreign plaintiffs in German courts for their contribution to specific climate impacts. This was the first climate cost recovery [case](#) to reach the merits stage. The Hamm court is now set to hear evidence from experts suggested by each party.

Of the US lawsuits, three were filed between July and December 2017, and four between January and May 2018. All of these complaints, except that of New York City, were filed in state courts. This can be explained by previous dismissals at the federal level such as in the Kivalina case, and experts' [assessments](#) that state laws are more favorable to plaintiffs in civil liability cases, as exemplified in the [lead paint case](#) in California (see above). As of [May 2018](#), the US lawsuits were still in the motions stage. In the California lawsuits, the [Richmond](#) and [Santa Cruz](#) cases were removed to federal courts by defendants who argued that the matters at hand related to federal common law. In March 2018, the Northern District of California accepted plaintiffs' motion to remand the [San Mateo](#) cases back to state court, while a month before a different judge from the same court had upheld that federal courts were the appropriate setting for the [San Francisco and Oakland](#) cases. In March 2018, the Federal judge overseeing the [San Francisco and Oakland](#) cases hosted a "climate change tutorial" during which each party presented scientific arguments answering the [judge's preliminary questions](#).

Defendants filed motions to dismiss in the New York and San Mateo cases. Chevron [filed third party complaints](#) against Statoil in the San Mateo, Imperial Beach and People of State of California cases.

On April 4th 2018, Milieudefensie sent a [letter of intent to sue](#) Shell, demanding that the company (1) align its business model and investments with the Paris Agreement's objectives, (2) phase out oil and gas production and reduce emissions to zero by 2050, and (3) come to an agreement with Milieudefensie to further elaborate, implement and report on climate policies. The civil society organization requested a written response to these demands within eight weeks, after which it indicated it would sue. The case will be filed in The Hague District Court, which [ruled](#) in June 2015 in the first instance that the Netherlands had to take more action to reduce greenhouse gas emissions in the [Urgenda case](#).

WHAT ARE THE LEGAL ARGUMENTS BEING USED?

In the US lawsuits, a major argument by plaintiffs is that defendants' mass production and promotion of fossil fuels contributed, and continues to contribute, to global warming-induced impacts such as rising sea-levels, which creates a public nuisance interfering with the rights of the communities represented.

Plaintiffs also allege that defendants supplied and continue to supply fossil fuel products while having knowledge of their potential harms, and while deploying efforts to prevent action to mitigate such harms. Some of the claimants allege that climate change-related injuries such as flooding also create a private nuisance interfering with their property, and constitute trespass invading and damaging property such as roads and bridges.

In a [novel approach](#) relying on recent evidence of the fossil fuel industry's knowledge and deception regarding climate science, several plaintiffs also claim strict liability for alleged failure to warn of the risks associated with the use of defendants' products, and for design defects based on allegedly known safety and injury risks associated to these products. This knowledge also forms the basis for negligence claims related to defendants' alleged breach of their duty of care by not preventing foreseeable

harm, and for negligent failure to warn. Finally, unjust enrichment is raised in one complaint, based on defendants' alleged past and continued profiting at the expense of the claimants.

In [Lliuya v. RWE AG](#), Mr Lliuya's claim is [based on](#) the general nuisance provision of the German Civil Law code under article 1004. Paragraph one reads: *If property is interfered with by means other than removal or retention of possession, the owner may require the disturber to remove the interference. If further interferences are to be feared, the owner may seek a prohibitory injunction.* In the case against Shell, Milieudefensie alleges that the company's lack of preventive measures to avoid unnecessary and unacceptable harm constitutes hazardous negligence, which is a tortious act under Dutch law ("onrechtmatige daad" in Dutch).

While all of these cases are civil claims, ultimately, what they seek to achieve is the protection of rights and accountability for the abuse of those rights. In that sense, advocates are employing a rights-based approach to environmental litigation against companies, just like they have in the past, when bringing climate litigation against governments.

WHAT ARE THE REMEDIES SOUGHT?

Claimants' demands in these lawsuits differ, reflecting varying strategies and assessments of elements for success in each case.

Milieudefensie states that it would not [claim](#) any monetary compensation from Shell, but would demand that the company put an end to its wrongful conduct by aligning its policies and investment decisions to climate goals established under the Paris Agreement.

Saúl Luciano Lliuya requests that RWE pay a portion of the costs that he and the local authorities would incur to protect his property from a glacial lake outburst flood, proportionally to RWE's attributable contribution to CO2 global emissions. In recognition that this company is not the only one responsible for climate change, and based on RWE's [measured contribution](#) of 0.47% of total emissions, the plaintiff requested that RWE pay €17,000 of the projected \$3,5 million protection costs. Mr Lliuya did not seek compensatory damages.

In the US lawsuits, the suing counties and cities are seeking cost recovery for the public money they had to spend as a result of past climate change-related injuries, as well as for the costs that they will have to incur in the future to adapt to further climate impacts. They are not seeking to change defendants' policies or laws and regulations, but insist that

defendants share the financial burden. All US plaintiffs demand that courts order the abatement of the nuisance they allege, so that defendants put an end to the nuisance. Some specifically demand the creation of an abatement fund. All but one US lawsuit include damages as part of the relief requested.



III. CORPORATE ACCOUNTABILITY FOR CLIMATE CHANGE THROUGH NON-JUDICIAL AND OTHER MECHANISMS

In addition to lawsuits, a number of recent and ongoing initiatives also represent important and promising steps in relation to corporate legal accountability for climate change.

[“CARBON MAJORS” INQUIRY BY THE COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES](#)

In September 2015, Greenpeace Southeast Asia, the Philippine Rural Reconstruction Movement, community organizations and individuals from the Philippines submitted a petition to the Commission on Human Rights of the Philippines (hereafter “the Commission”) requesting an investigation into the role of 47 large investor-owned fossil fuel and cement companies in human-induced climate change. Petitioners, who have suffered devastating climate change-related disasters in recent years, claim that these companies have interfered with the enjoyment of their fundamental rights. In December 2015, the commission formally opened the *National Inquiry on the Impact of Climate Change on the Human Rights of the Filipino People and the Responsibility of Therefor, if any, of the “Carbon Majors”* (hereafter “the Inquiry”). Following the submission of [responses](#) by some of the 47 companies, [amicus briefs and statements](#) in support of the petition by experts from around the world, demands for dismissal and amended complaints, in March 2018, the Commission held its [first public hearing](#) in Manila. It will hold hearings in London and New York as well, so as to [facilitate respondents’ participation](#) in the process, and aims to conclude its investigation by the end of 2018. The majority of the companies named in the Inquiry have questioned the merits of the case, as well as the Commission’s authority to investigate them given that they don’t operate in the Philippines.

The Commission’s decision will not be legally binding. While the Commission can neither enforce its decision nor impose sanctions, it can nonetheless pronounce itself on the 47 respondents’ responsibility and provide recommendations as to how impacts should be mitigated. This Inquiry is unprecedented and could have far-reaching impacts. [Experts](#) see the Commission’s initiative as playing a “vital role in bringing the truth to light, laying the foundations for accountability, and...protecting and promoting human rights in the Philippines and beyond”. [Academics](#) also highlight the potential impacts both for state and corporate obligations in relation to environmental protection. The Commission itself [hopes](#) that the Inquiry can “promote the notion that businesses have an obligation to respect human rights” and trigger complementary measures including by governments, shareholders and investors. According to Kristin Casper, Litigation Counsel for the Global Climate Justice and Liability Campaign based at Greenpeace Canada, the Philippines Commission’s national inquiry is “highly replicable in other countries, and its result could provide grounds for civil claims in the Philippines or in Home states of the fossil fuel companies”. She furthermore highlighted that the inquiry, unlike lawsuits seeking compensation for damages, also sought to prompt action by policymakers and legislators to put in place accountability mechanisms that victims of climate-related harms can easily access.

[US ATTORNEYS GENERAL’S EXXONMOBIL INVESTIGATION](#)

In 2015 and 2016, the attorneys general (AG) of New York, the Virgin Islands and Massachusetts [launched](#) investigations aiming to assess whether Exxon had lied to the general public about the risks of climate change as well as to

its investors regarding such risks' impacts on the company's business. In November 2015, the New York AG issued a [subpoena](#) requesting Exxon to [submit documents](#) related to climate change, reaching as far back as 1977, including: documents prepared for or by industry groups; documents related to Exxon's support or funding of advocacy groups; and marketing and advertising documents. The probe mostly relies on the Martin Act, which protects shareholders from fraud, deception, concealment or false statements and gives broad discovery powers. The New York AG had investigated Peabody Energy on similar grounds in 2013 and reached an [agreement](#) leading to improved disclosure and transparency.

In April 2016, the Massachusetts AG issued a similar [civil investigative demand](#) to Exxon, and the Virgin Island AG issued a [subpoena](#) citing the territory's anti-racketeering law, which it [withdrew](#) three months later following the filing of a lawsuit by Exxon for alleged violation of its right to free speech. Other US attorneys general, such as the AG of the state of California, are [said](#) to contemplate launching similar investigations. ExxonMobil called the probes "baseless" and "politically motivated", and retaliated in a series of legal actions at state and federal levels (see section IV). In March 2018, a federal judge dismissed Exxon's claim against the New York and Massachusetts AGs alleging conspiracy and violation of its right to free speech. In April 2018, Massachusetts' top court rejected ExxonMobil's attempt to block the Massachusetts investigation, and Exxon's analogous challenge in front of New York state courts was pending in May 2018.

Information coming out of these investigations could both reinforce claims made under existing lawsuits regarding fossil fuel companies' alleged knowledge and deception, as well as lead to new litigation for fraud. According to [some experts](#), the investigations could pave the way for a wave of litigation and settlements similar to that against the tobacco industry. The AGs' investigations [could](#) force fossil fuel companies to be more transparent in relation to climate change risks, but could also reaffirm state authorities' powers to hold corporations accountable regarding climate change, and encourage more investigative and regulatory action.

SHAREHOLDER ACTIVISM

Shareholders are increasingly [demanding](#) transparency in relation to the financial and liability risks that fossil fuel companies face as a result of climate change. In May 2017 for example, Exxon shareholders [approved a resolution](#) which required more in-depth reporting about climate change risks. Shareholders also demand disclosure regarding [companies' lobbying](#), for example by questioning the membership and funding of industry associations deemed to block action on climate change. While fossil fuel companies increasingly report on their climate policies, [experts](#) argue that these policies and transparency efforts remain unsatisfactory. At the same time, the movement for fossil fuel divestment continues to [progress](#) and gain momentum. When [New York City announced](#) its climate lawsuit in January 2018, it indicated it would divest \$5 billion of its pension funds investment in fossil fuels. Shareholders are also scrutinising industry associations and their negative influence on government climate policy. For example, recent shareholder resolutions at BHP Billiton and [Rio Tinto](#) highlighted the misalignment between the company's internal climate policies and the destructive practices of their trade associations, in particular the coal lobbyist Minerals Council of Australia. These resolutions were [notable](#) as they were supported by a record number of investors, including global institutional investors.

Shareholder litigation, including for alleged failure to disclose on climate risks, could continue to grow. In November 2016, shareholders [filed a lawsuit](#) against Exxon alleging false and misleading statements relating to climate change impacts in the company's financial reporting. The case is ongoing. In August 2017, [shareholders](#) of the Commonwealth Bank of Australia filed a [complaint](#) in federal court alleging inadequate disclosure of climate-change related business risks in its 2016 annual report. The [Abrahams v. Commonwealth Bank of Australia](#) case was withdrawn a month later after shareholders expressed satisfaction with the bank's 2017 reporting and decision not to fund a controversial coal project.

Moreover, according to experts, [company officials](#) have [fiduciary obligations](#) in relation to climate risks and now face a real and

heightened [risk](#) of litigation. Insurers are also increasingly at risk of being targeted by third-party liability claims, based on their knowledge of risks associated with climate change.

OECD NATIONAL CONTACT POINT CASES

In May 2017, a group of Dutch civil society organizations presented an OECD [complaint](#) against ING in front of the Dutch National Contact Point (NCP), in relation to the bank's lack of action on climate change, in particular vis-a-vis targets set in the Paris agreement. The [case](#) concerns ING's failure to report on and set reduction targets related to emissions linked to its loans and investments worldwide. The Dutch NCP accepted the case in November 2017, making it the first instance focusing on climate change examined under the OECD Guidelines. Greenpeace Netherlands, Oxfam, BankTrack and Milieudefensie [have expressed hopes that](#) this complaint could "open up a new avenue for holding businesses accountable for their carbon footprint and climate impacts". The case is pending.

CLIMATE CHANGE AND INTERNATIONAL HUMAN RIGHTS BODIES

A number of initiatives and developments in the human rights field could affect the legal accountability of companies in relation to climate change. The interrelatedness of climate change and human rights is well [established](#). Numerous [UN bodies and agencies](#) explicitly refer to the impacts of climate change on the enjoyment of human rights, and recent reports have studied states' human rights obligations in the [context of climate change](#) and in relation to the [right to a healthy environment](#). In a landmark advisory opinion in February 2018, the Inter-American Court of Human Rights stated that a

healthy environment was a fundamental human right. Experts are [reflecting](#) on the legal obligations of companies and investors in relation to climate change, "based on its interpretation of the law as it stands or will likely develop", to develop [Climate Principles for Enterprises](#). In their [Amicus Curiae](#) to the Commission on the Human Rights of the Philippines, Amici examined Carbon Majors' responsibility and accountability based on the UN Guiding Principles, fundamental legal principles of legal and moral responsibility and the polluter pay principle.

LEGISLATIVE INITIATIVES

Legislation related to climate change has increased in recent decades. In [early 2017](#), there were over 1,200 laws and policies related to climate change in 164 countries, while in 1997 there were only 60. Some legislation is also beginning to look at company liability. On 23 March 2018, a draft bill looking to facilitate the filing of lawsuits for damages against climate polluting companies was [introduced](#) in Ontario, Canada. The [Liability for Climate-Related Harms Act](#), also referred to as Bill 21, would provide strict liability (which does not require proof of fault) for fossil fuel companies responsible for significant GHG emissions. The bill was drafted with the support of [Greenpeace Canada](#), and was modelled on an [Ontario legislation](#) which allowed suing tobacco companies for health damages. It has passed second reading in the Ontario legislature and is now [on its way to committee](#) for further study. The draft climate liability bill is intended to protect taxpayers from footing the costs of climate change-related damages, and lawyers hope that it can pave the way for other governments to introduce similar bills.



IV. INDUSTRY REACTION TO CLIMATE CHANGE LITIGATION AND CONTEXT OF CLIMATE ACTIVISM

INDUSTRY REACTION

Fossil fuel companies being sued in relation to their role in climate change are responding through regular court processes, for example by filing motions to dismiss, [third-party complaints](#) or removing cases from US state courts to federal courts (see above). Despite initially complying with the New York Attorney General subpoena and [submitting](#) more than a million documents, ExxonMobil has responded to the investigation in a way deemed particularly [aggressive](#). The company went on the legal offensive to try to block the investigations, filing lawsuits against the AG in a Texas federal court, alleging lack of jurisdiction and political bias. In June 2016, the Virgin Island Attorney General [agreed](#) to withdraw its subpoena and Exxon dropped its lawsuit against the AG. The Texas court initially ordered the attorney general to submit to Exxon's depositions and answer the company's questioning, but later on cancelled the orders and agreed to transfer the case to New York, where the federal judge [dismissed](#) Exxon's complaints in March 2018. Exxon also [petitioned](#) Massachusetts' state courts to set aside the Attorney General's civil investigative demand, arguing that Texas was the proper venue for any legal action because the company is headquartered in Dallas. The Massachusetts' Attorney General [denounced](#) "Exxon's scorched earth campaign" to block the AGs investigations, and stated that "people everywhere deserve answers".

In January 2018, Exxon [filed](#) a [pre-suit deposition](#) in a Texas district court requesting California government officials in six localities that filed lawsuits against fossil fuel companies to submit documents and give testimony. Exxon stated this would allow it to determine whether it would be warranted to file a lawsuit alleging abuse of legal process, civil conspiracy, and

violations of ExxonMobil's First Amendment rights (related to freedom of speech). Exxon also alleged that the municipalities had [misinformed potential investors](#) by failing to disclose the climate change-related risks that they claim to face in their bond offerings. Exxon alleges that the California lawsuits and the AG's investigations are part of a broad conspiracy aiming to prevent the company from expressing its viewpoint on climate change and to coerce the company to "adopt their preferred policy responses" on the issue. Lawyers have [decried](#) Exxon's positioning "as a victim" and see these counterattacks as scare and diversionary tactics.

Industry associations, whose membership cannot be asserted, have also used courts in reaction to or against judicial initiatives against the fossil fuel industry. The [National Association of Manufacturers \(NAM\)](#) and [Competitive Enterprise Institute](#) for example [demanded](#) investigations into the California municipalities' statements about climate impacts in their bond offerings in [April 2018](#) and [February 2018](#) respectively. [The Competitive Enterprise Institute](#) and the [Energy & Environment Legal Institute](#) also filed lawsuits in relation to the New York AG's Exxon investigation. Climate change lawsuits have also been confronted outside courtrooms through more subtle strategies. [Advocates](#) and journalists continue to unveil the strategies and [actors](#) behind [climate misinformation campaigns](#), which also target [climate advocates](#) taking to the court. The [National Association of Manufacturers \(NAM\)](#)'s [Manufacturers' Accountability Project](#) for example criticises lawyers and public officials undertaking climate lawsuits and attorneys general investigations, which it portrays as politically and profit-motivated. According to the [Union of Concerned Scientists](#), aggressive public relations campaigns promoting [climate deception](#) and

[denial](#) continue, in [mainstream media](#) and on social media, including through [industry associations](#).

The fossil fuel industry is perceived by many as having one of the most [combative lobbying strategies](#), and has also been singled out for its involvement in [capture of the judiciary](#). The [American Petroleum Institute](#) and oil companies [are said to](#) regularly fund judicial conferences for example designed to promote skepticism of scientific evidence used to defend government environmental regulations. Experts also [highlight](#) that the fossil fuel industry's promotion of market-based solutions to climate change such as a [Carbon Tax](#) tend to include a clause that would preempt climate liability litigation.

RISKS FACED BY CLIMATE ACTIVISTS

Efforts to hold corporations accountable for climate change need to be looked at within the broader context of increased [restrictions of civic freedoms and attacks on human rights defenders](#). Climate activists and scientists indeed find themselves increasingly stigmatised, criminalised, and targeted by lawsuits aiming to deter action and silence criticism. [In the USA](#)

for example, [state bills](#) restricting the right to protest continue to be enacted, [terrorism charges are applied](#) to climate activists, Congress sent a [letter](#) to the Department of Justice demanding that pipeline activists be prosecuted, and the industry association ALEC [promotes](#) model "Critical Infrastructure Protection" bills promoting ecoterrorism-like charges. A similar law planning prison sentence for damage or trespass in critical infrastructure such as pipelines is, for example, likely to be passed in [Louisiana](#).

Environmental organizations, activists, [journalists](#) and [scientists](#) are increasingly targeted by lawsuits brought by companies and state authorities alike, which constitute [Strategic Lawsuits Against Public Participation](#) (SLAPPs) aiming to silence criticism. [Preemptive legal action](#) is also taken to prevent climate activism, for example through requests for injunctions.

Activists nonetheless continue [organising](#) and using courts to challenge restrictions to climate activism, such as [preemptive injunctions](#). They have been [successful](#) in several [cases](#) in using the "necessity defense" when prosecuted, justifying disobedience actions by the "necessity" of confronting the climate crisis.

CONCLUSION

The rising trend of climate change litigation brought directly against companies presents clear opportunities to strengthen corporate accountability for climate change. As this Annual Briefing demonstrates, communities and advocates are increasingly using the courts as key fora to generate change and confront fossil fuel companies on their responsibility for climate harm, and their liability over documented attempts to conceal what they know about it. At a time when governments have repeatedly failed to take bold steps to adequately combat climate change, strategic litigation is a beacon of hope for the climate and broader corporate accountability movements.

Climate lawsuits against companies are the fruit of increased collaboration between concerned individuals, cities, human rights and climate advocates, scientists and expert litigators who have combined and integrated their respective expertise and strategies for corporate accountability.

While plaintiffs have relied on a variety of legal arguments and frameworks in their litigation efforts, ultimately, all of these civil lawsuits seek to protect and demand accountability for the abuse of rights. Advocates have employed litigation tools that environmental lawyers have pioneered and mastered, including the use of scientific evidence to attribute responsibility and/or quantify costs of damage or adaptation, invoking or asserting a duty of care, or even citing potential violations of specific environmental statutes.

Plaintiffs have used rights-based approaches in the past in their efforts to sue governments, and advocates have now expanded this strategy to include environmental litigation against companies. The use of both human rights and environmental law in establishing legal arguments reinforces the value of strong collaboration between advocates from both spheres in holding companies legally

accountable for their human rights impacts. This growing interconnectedness between the movements provides a strong foundation for impactful climate litigation going forward.

The outcome of these lawsuits is uncertain, and the road ahead presents many challenges: not least, the response of carbon majors can be expected to be aggressive, ruthless and well-financed. Nonetheless, the significance of these lawsuits extends beyond the individual claims by communities and localities. Collectively, these cases can establish a global consensus on where the responsibility lies and where structural changes are imperative and inevitable.

Climate change litigation against fossil fuel companies is one of tools used by advocates, and reinforces other strategies for climate justice and corporate accountability. Both lawsuits and non-judicial initiatives are important levers to press companies to be more transparent and take bolder steps to tackle climate change. In turn, action by corporate leaders can encourage further climate policy and regulatory measures both at the national and international levels.

The background and analysis provided in this Annual Briefing is intended as a catalyst for further conversations and action on the critical question of corporate legal accountability for climate change and human rights.

Call to action: Please [get in touch with us](#) so we can help share the word on your own efforts, invite you to join future conversations, and explore opportunities for collaboration. By working together, individual human rights advocates and groups become more effective in protecting their rights and those of future generations. As human rights advocates, we need to jointly pick up the pace of various initiatives and coordinated actions and follow up with companies to address needed reforms.

CASE ³	DATE AND COURT FILED	PLAINTIFFS AND LEGAL COUNSEL	DEFENDANTS	CAUSES OF ACTION	REMEDY SOUGHT	COURT DOCUMENTS AND FURTHER INFORMATION
Luciano Lliuya v. RWE AG.	23 November 2015, in the district court of Essen, Germany (regional court)	Saúl Ananías Luciano Lliuya, represented by Rechtsanwälte Günther	RWE AG	General nuisance under German civil code (article 1004)	Contribution to costs of protection measures against a flood threatening to destroy the claimant's house	Saúl versus RWE - The Case of Huaraz, Germanwatch
County of San Mateo v. Chevron Corp.	17 July 2017 in Superior Court of California, County of San Mateo; Superior Court of California, County of Marin; and Superior Court of California, County of Contra Costa (state courts)	1) County of San Mateo, represented by and San Mateo County Counsel and assisted by Sher Edling LLP; 2) County of Marin, represented by Office of the County Counsel of Marin and assisted by Sher Edling LLP; and 3) City of Imperial Beach, represented by City Attorney for the City of Imperial Beach and assisted by Sher Edling LLP	37 Companies ⁴	1) Public Nuisance on behalf of the People of California; 2) Public Nuisance on behalf of the City of Richmond; 3) Strict Liability- failure to warn; 4) Strict Liability- design defect; 5) Private Nuisance; 6) Negligence; 7) Negligence- failure to warn; 8) Trespass	1) Compensatory damage; 2) Equitable relief incl. abatement of nuisance); 3) Punitive damages; 4) Disgorgement of profits; 5) Costs of suit; 6) Other deemed proper by the court	City of Richmond v. Chevron Corp. , Climate Change Litigation Databases; Case profile by Sher Edling
People of State of California v. BP p.l.c.	19 September 2017 in Superior Court of California, County of Alameda; and Superior Court of California, County of San Francisco (state courts)	1) City of Oakland, represented by Oakland City Attorney; 2) City of San Francisco, represented by San Francisco City Attorney; both assisted by Hagens Berman Sobol Shapiro LLP	1) BP PLC; 2) Chevron Corporation; 3) ConocoPhillips Company; 4) Exxon-Mobil; 5) Royal Dutch Shell PLC; 6) Statoil (brought as third-party defendant)	Public nuisance on behalf of the People of the State of California	1) Finding Defendants jointly and severally liable for causing, creating, assisting in the creation, of, contributing to, and/or maintaining a public nuisance; 2) Ordering an abatement fund remedy to be paid for by Defendants to provide for infrastructure	People of State of California v. BP p.l.c. , Climate Change Litigation Databases; Case profile by Hagens Berman; and Case profile by Oakland City Attorney

3) **These cases group several separate lawsuits filed by the different plaintiffs mentioned.** The first six cases are named as registered in the Climate Change Litigation Databases, by Sabin Center for Climate Change Law in collaboration with Arnold & Porter Kaye Scholer LLP. [Climate Change Litigation Databases](#), by Sabin Center for Climate Change Law in collaboration with Arnold & Porter Kaye Scholer LLP.

4) - 1) Chevron Corp.; 2) Chevron USA Inc; 3) ExxonMobil Corp; 4) BP PLC; 5) BP America Inc; 6) Royal Dutch Shell PLC; 7) Shell Oil Products Company LLC; 8) Citgo Petroleum Corp.; 9) ConocoPhillips; 10) ConocoPhillips Company; 11) Phillips 66; 12) Peabody Energy Corp.; 13) Total E&P USA Inc.; 14) Total Specialties USA Inc.; 15) Arch Coal, Inc; 16) ENI S.p.A.; 17) Eni Oil & Gas Inc.; 18) Rio Tinto PLC; 19) Rio Tinto Ltd.; 20) Rio Tinto Energy America Inc; 21) Rio Tinto Minerals Inc; 22) Rio Tinto Services Inc; 23) Statoil ASA; 24) Anadarko Petroleum Corp.; 25) Occidental Petroleum Corp; 26) Occidental Chemical Corp.; 27) Repsol S.A.; 28) Repsol Energy North America Corp.; 29) Repsol Trading USA Corp.; 30) Marathon Oil Company; 31) Marathon Oil Corporation; 32) Marathon Petroleum Corp; 33) Hess Corp.; 34) Devon Energy Corp.; 35) Devon Energy Production Company, L.P.; 36) Encana Corp.; 37) Apache Corp

CASE	DATE AND COURT FILED	PLAINTIFFS AND LEGAL COUNSEL	DEFENDANTS	CAUSES OF ACTION	REMEDY SOUGHT	COURT DOCUMENTS AND FURTHER INFORMATION
					in San Francisco necessary for the People to adapt to global warming impacts such as sea level rise; 3) Attorneys' fees; 4) Costs and expenses; 5) Pre- and post-judgment interest; 6) Other relief deemed proper by the court	
County of Santa Cruz v. Chevron Corp.	20 December 2017 in 2017 in Superior Court of California, County of Santa Cruz (state court)	1) City of Santa Cruz, represented by City Attorney for the City of Santa Cruz and assisted by Sher Edling LLP; 2) County of Santa Cruz represented by Santa Cruz Office of the County Counsel and assisted by Sher Edling LLP	28 Companies ⁵	1) Public Nuisance on behalf of the People of California; 2) Public Nuisance on behalf of San Cruz County and City of Santa Cruz; 3) Strict Liability- failure to warn; 4) Strict Liability- design defect; 5) Private Nuisance; 6) Negligence; 7) Negligence- failure to warn; 8) Trespass	1) Compensatory damages; 2) Equitable relief, including abatement of nuisance; 3) Attorney's fees; 4) Punitive damages; 5) Disgorgement of profits; 6) Costs of suit; 7) Other relief deemed proper by the court	County of Santa Cruz v. Chevron Corp. , Climate Change Litigation Databases; Case profile by Sher Edling
City of New York v. BP p.l.c.	9 January 2018 in the Southern District of New York (federal court)	City of New York, represented by New York City Law Department and assisted by Hagens Berman Sobol Shapiro LLP and Seeger Weiss LLP	1) BP PLC; 2) Chevron Corporation; 3) ConocoPhillips; 4) ExxonMobil Corporation; 5) Royal Dutch Shell PLC	1) Public nuisance; 2) Private nuisance; 3) Trespass	1) Compensatory damage for expenses already incurred; 2) Compensatory damage for current expenses; 3) Injunction for the Defendants to abate public nuisance and trespass in the event they fail to pay the monetary	City of New York v. BP p.l.c. , Climate Change Litigation Databases

5) 1) Chevron Corp.; 2) Chevron USA Inc; 3) ExxonMobil Corp; 4) BP PLC; 5) BP America Inc; 6) Royal Dutch Shell PLC; 7) Shell Oil Products Company LLC; 8) Citgo Petroleum Corp.; 9) ConocoPhillips; 10) ConocoPhillips Company; 11) Phillips 66; 12) Total E&P USA Inc.; 13) Total Specialties USA Inc.; 14) Eni S.p.A; 15) Eni Oil & Gas Inc.; 16) Anadarko Petroleum Corp.; 17) Occidental Petroleum Corp.; 18) Occidental Chemical Corp.; 19) Repsol S.A.; 20) Repsol Energy North America Corp.; 21) Repsol Trading USA Corp.; 22) Marathon Oil Company; 23) Marathon petroleum Corp.; 24) Hess Corp.; 25) Devon Energy Corp.; 26) Devon Energy Production Company, L.P.; 27) Encana Corp.; 28) Apache Corp.

CASE	DATE AND COURT FILED	PLAINTIFFS AND LEGAL COUNSEL	DEFENDANTS	CAUSES OF ACTION	REMEDY SOUGHT	COURT DOCUMENTS AND FURTHER INFORMATION
					damages; 4) Costs and disbursements for filing action; 5) Attorney's fees; 6) Pre- and post-judgment interest; 7) Other relief deemed proper by the court	
City of Richmond v. Chevron Corp.	22 January 2018 in Superior Court of California, County of Contra Costa (state court)	City of Richmond, represented by the City Attorney's Office for the City of Richmond and assisted by Sher Edling LLP	29 Companies ⁷	1) Public Nuisance on behalf of the People of California; 2) Public Nuisance on behalf of the City of Richmond; 3) Strict Liability- failure to warn; 4) Strict Liability- design defect; 5) Private Nuisance; 6) Negligence; 7) Negligence- failure to warn; 8) Trespass	1) Compensatory damage; 2) Equitable relief incl. abatement of nuisance; 3) Punitive damages; 4) Disgorgement of profits; 5) Costs of suit; 6) Other deemed proper by the court	City of Richmond v. Chevron Corp., Climate Change Litigation Databases; Case profile by Sher Edling
Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.), Inc.	17 April 2018 in District Court of County of Boulder, State of Colorado (state court)	1) Boulder County; 2) San Miguel County; and 3) the City of Boulder, represented by and advised by EarthRights International, Niskanen Center, and Hannon Law Firm LLC	1) ExxonMobil Corp.; 2) Suncor	1) Public nuisance; 2) Private nuisance; 3) Trespass; 4) Unjust enrichment; 5) Violation of the Colorado Consumer Protection Act	1) Monetary relief; 2) Remediation and/or abatement of the hazards discussed; 3) costs and disbursements; 4) attorneys' fees; 5) pre- and post-judgment interest; 6) other remedy or relief deemed relevant by the court.	Case profile by Earth Rights International
Notice of intention to sue by Milieudéfensie to Shell ⁶	4 April 2018	Milieudéfensie (Friends of the Earth Netherlands)	1) Royal Dutch Shell PLC			Press release & documents by Friends of the Earth International & Milieudéfensie

6) The lawsuit had not been filed at the time of writing this report.

7) 1) Chevron Corp; 2) Chevron USA Inc; 3) ExxonMobil Corp; 4) BP PLC; 5) BP America, Inc.; 6) Royal Dutch Shell PLC; 7) Shell Oil Products Company LLC; 8) Citgo Petroleum Corp.; 9) ConocoPhillips; 10) ConocoPhillips Company; 11) Phillips 66; 12) Total E&P USA Inc.; 13) Total Specialties USA Inc.; 14) Eni S.p.A.; 15) Eni Oil & Gas Inc.; 16) Anadarko Petroleum Corp.; 17) Occidental Petroleum Corp.; 18) Occidental Chemical Corp.; 19) Repsol S.A.; 20) Repsol Energy North America Corp.; 21) Repsol Trading USA Corp; 22) Marathon Oil Company; 23) Marathon Oil Corp.; 24) Marathon Petroleum Corp.; 25) Hess Corp.; 26) Devon Energy Corp.; 27) Devon Energy Production Company, L.P.; 28) Encana Corp.; 29) Apache Corp.

CASE	DATE AND COURT FILED	PLAINTIFFS AND LEGAL COUNSEL	DEFENDANTS	CAUSES OF ACTION	REMEDY SOUGHT	COURT DOCUMENTS AND FURTHER INFORMATION
King County v. BP p.l.c	9 May 2018 in Superior Court of Washington, King County (state court)	King County, represented by King County prosecuting attorney's office and assisted by Hagens Berman Sobol Shapiro LLP	1) BP PLC; 2) Chevron Corp.; 3) ConocoPhillips Corp.; 4) ExxonMobil Corp.; 5) Royal Dutch Shell PLC; 6) Does one through 10	1) Public nuisance; 2) Trespass	1) Finding Defendants jointly and severally liable for causing, creating, assisting in the creation of, contributing to, and/or maintaining a public nuisance; 2) Ordering an abatement fund remedy to be paid for by Defendants to provide for infrastructure, costs of studying and planning and other costs necessary to adapt to global warming impacts; 3) Compensatory damages; 4) Attorneys' fees; 5) Costs and expenses; 6) Pre- and post-judgment interest; 7) Other relief deemed proper by the court	Press release and other documents by King county

ANNEX 2: Key reference documents

Major Reports and Databases

[Achieving Justice and Human Rights in an Era of Climate Disruption](#), International Bar Association, 2015

[Climate Change Laws of the World](#), Grantham Research Institute on Climate Change and the Environment and Sabin Center for Climate Change Law

[Climate Change Litigation Databases](#), Sabin Center for Climate Change Law in collaboration with Arnold & Porter Kaye Scholer LLP; and other [Resources](#) by the Sabin Center for Climate Change Law

[Climate Files](#)

[Climate Litigation Strategies](#) and [Climate Litigation Primer](#), ELAW, 2018

[Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis](#), Center for International Environmental Law (CIEL), 2017

[Taking Climate Justice into our own Hands](#), West Coast Environmental Law and the Vanuatu Environmental Law Association, 2015

[The Status of Climate Change Litigation: A Global Review](#), UN Environment, 2017

News

[Climate Liability News](#)

[Inside Climate News](#)

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