Climate accountability litigation

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1968: American Petroleum Institute commissions report from Stanford Research Institute

In summary, Revelle makes the point that man is now engaged in a vast geophysical experiment with his environment, the earth. Significant temperature changes are almost certain to occur by the year 2000 and these could bring about climatic changes.

- “[T]here seems to be no doubt that the potential damage to our environment could be severe”
- Temperatures might rise by at least 1.1°F if atmospheric CO2 increased 25 percent, and that temperature increases would “be three times this figure” if CO2 levels doubled
WHAT THEY KNEW: NEED FOR REDUCTIONS

1980: American Petroleum Institute climate task force
- Recognized “the probability of large [climate] effects 50 years away,” but that the “immediate problem [would be] considerably eased” “[i]f fossil fuel rates are reduced.”

TIME FOR ACTION? MARKET PENETRATION TIME THEORY SAYS
THERE IS NO LEeway

1980: Exxon scientist Henry Shaw
- In the next few decades, there are no near likely to-be technological “fixes” (e.g., emission control devices or techniques) that will provide practical means of controlling CO2 emissions resulting from combustion.
- In policy actions to control the increased CO2 loading of the atmosphere are delayed until climate changes resulting from such an increase are discernible, then it is likely that they will occur too late to be effective.
REACTION TO PUBLIC CONCERN

- **1988**
  - Dr. James Hansen testimony to Congress: “The greenhouse effect has been detected, and it is changing our climate **now.**”
  - Five bipartisan climate bills in Congress; George H.W. Bush promises action
  - IPCC formed with US support

- **1989:** Exxon & API form “Global Climate Coalition”
  - Emphasize “**uncertainty**”; oppose Kyoto Protocol

- **1998:** API Global Science Communications Team
  - Goal: to get “[a] majority of the American public” to “recognize[ ] that significant uncertainties exist in climate science” and to make climate change “a non-issue, meaning that the Kyoto Protocol is defeated and there are no further initiatives to thwart the threat of climate change”
INTERNAL MEMOS AND ACTIONS

- Mobil scientist to industry in 1995:
  - "The scientific basis for the Greenhouse Effect and the potential impact of human emissions of greenhouse gases such as CO2 on climate is well established and cannot be denied."
  - "Contrarian theories" to explain climate change are not credible

- Planning for warming:
  - 1996: Mobil used climate science to make “structural allowances for rising temperatures and sea levels” in offshore facilities in Canada
  - 1986-1992: Exxon uses climate change models to conclude that “a warming Arctic” would “only help lower exploration and development costs”
EXTERNAL COMMUNICATIONS

- 1997 Mobil advertisement:
  - “Scientists cannot predict with certainty if temperatures will increase, by how much and where changes will occur. We still don’t know what role man-made greenhouse gases might play in warming the planet.”

- Exxon publicly in 2000: Climate science is “unsettled”

- Advertisements as late as 2004:
  - Emphasizing “[s]cientific uncertainties” that “limit our ability to make objective, quantitative determinations regarding the human role in recent climate change, or the degree and consequence of future change.”
EFFECTIVENESS OF STRATEGY

- **1992:**
  - 88% of Americans believed that global warming was a serious problem

- **1997:**
  - 42% of Americans believed that global warming was a serious problem

- **2012:**
  - Only 45% of Americans agreed that “scientists believe that earth is getting warmer because of human activity”
PUBLIC NUISANCE SUITS

- “Public nuisance”: unreasonable interference with, or injury to, the rights of the public, including health and safety
  - Little dispute that climate change is harming the public, in myriad ways
  - Other claims include private nuisance, negligence, trespass, and product liability

- Similar to current opioid lawsuits – seeking contribution for climate harms

- 15 lawsuits (mostly governments; one fishermen’s association)
LITIGATION PROGRESS

- State vs. federal court
  - Communities have won multiple federal decisions sending back to state court
  - Supreme Court petition
  - Three cases (Colorado, Baltimore, Rhode Island) now proceeding in state court; eight California cases probably close behind

- Viability of cases?
  - Dismissal of San Francisco/Oakland case reversed; rehearing pending in Ninth Circuit
  - New York City dismissal on appeal
  - Waiting for state court ruling in Colorado
FRAUD/CONSUMER PROTECTION SUITS

- Four suits filed by Attorneys General in New York, Massachusetts, Minnesota and D.C.
- NY: Judge found *investors* were not defrauded by Exxon
- Other cases claim *consumer* fraud against Exxon and other companies
EXXON: AT HOME IN NEW JERSEY

- Responsible for more than 3% of global CO2 emissions since 1965
- Over 40 billion tons of CO2 (or CO2 equivalent) – more than an entire year’s global output
- Originally Standard Oil Company of New Jersey; still incorporated in NJ
- Can be regulated by New Jersey, and sued here for its responsibility for causing damage anywhere in the world
Thank you!

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