

CADWALADER
CLIMATE
Connecting Climate Change and the Law



Oregon County Sues Fossil Fuel Companies and Consulting Firm For Damages Related to 2021 'Heat Dome'

September 5, 2023



By Jason Halper
Partner and Co-Chair | Global Litigation



By Timbre Shriver
Associate | Global Litigation

In a **civil suit** filed in Oregon state court in June 2023, an Oregon county is suing more than a dozen large oil, gas and coal companies, seeking more than \$50 million in damages, in connection with a 2021 “heat dome” and other recent extreme heat events that the county alleges were caused by the defendants’ contributions to climate change. Multnomah County is also seeking to recover \$1.5 billion to pay for potential damage from future extreme heat events and an additional \$50 billion to study, plan and protect people and infrastructure from extreme heat.

The complaint alleges that the defendants, oil majors including Chevron, ConocoPhillips and Shell, fossil fuel trade associations, as well as McKinsey & Company, are responsible for a substantial portion of all greenhouse gas emissions between 1965 and 2023. The county blames the fossil fuel companies for both the direct emissions from their industry activities and emissions from the end use of their products.

The county claims that these emissions were a substantial factor in causing the heat dome that occurred in June 2021 and resulted in the deaths of 69 people, as well as two similar extreme heat events in 2022 and one in May 2023. The heat dome is explained further in the claim: pollution “caused dramatic rises in global temperature, drought, and the drying of regional soil” and that when those conditions met with a dense high-pressure system hovering over the Pacific Northwest, regional temperatures increased as high as 116°F/46.7°C, 40°F higher than the daily average. In previous years, the county reported zero heat-related deaths. In addition, the plaintiff alleges that the burning of fossil fuels substantially contributed to hotter, drier conditions that caused more wildfires, and toxic smoke generated by wildfires has led to

increased healthcare visits and hospitalizations. The county supports its allegations with a scientific study concluding, according to the complaint, that fossil fuel emissions caused the heat dome.

The complaint asserts that the companies are liable for negligence, intentional and negligent creation of a public nuisance, and fraud and deceit by misrepresenting to the public for decades that burning fossil fuels would not contribute to climate change and extreme weather events. The county also asserts a claim for trespassing, arguing that it never gave the defendants permission to intrude on its property and cause damage from fire, smoke, water or intense heat.

Counsel for Chevron **stated in an interview** that “[a]ddressing the challenge of global climate change requires a coordinated policy response. These lawsuits are counterproductive distractions from advancing international policy solutions. The federal Constitution bars these novel, baseless claims that target one industry and group of companies engaged in lawful activity that provides tremendous benefits to society.”

Taking the Temperature: As we have covered, climate litigation arising from extreme weather events is an emerging trend identified by the Grantham Institute in its 2023 Trends in Climate Litigation Snapshot. Climate change activists are seeking to hold fossil fuel companies accountable for what they assert is decades of failing to disclose the harm their industry poses to the environment. Major, multinational companies in the energy and fossil fuel sector are often the target of such suits. For example, **as we recently reported**, Greenpeace, ReCommon and 12 Italian citizens sued ENI, Italy’s largest energy company, for allegedly concealing the detrimental effects of the use of fossil fuels since 1970.

Likewise, a number of suits based on state constitutional rights have been filed around the U.S. Recently, a group of Montana residents, all minors, prevailed at trial on a lawsuit, **which we previously discussed**, claiming that they “have been and will continue to be harmed by the dangerous impacts of fossil fuels and the climate crisis,” and that the defendants have violated the Montana constitution by fostering and supporting fossil fuel-based energy policies in the state that led to these conditions. Several constitutional provisions **allegedly were violated** as a result of these actions, according to plaintiffs, including the “inalienable . . . right to a clean and healthful environment,” the obligation of the “[t]he state and each person [to] maintain and improve a clean and healthful environment in Montana for present and future generations,” and Montana’s due process and equal protection provisions. Plaintiffs also challenged a provision in the Montana Environmental Policy Act mandating that any environmental review conducted in connection with action taken in furtherance of the policy “may not include a review of actual or potential impacts beyond Montana’s borders. It may not include actual or potential impacts that are regional, national, or global in nature.” According to the complaint, “[t]his has been interpreted to mean that defendants cannot consider the impacts of climate change in their environmental reviews.” On August 14, 2023, **the court determined** that the government’s enforcement of this provision has harmed the state’s environment and the plaintiffs by preventing Montana from considering the climate impacts of energy projects, rendering the provision unconstitutional: “By prohibiting consideration of climate change, GHG emissions, and how additional GHG

emissions will contribute to climate change to be consistent with the Montana Constitution, the [statute] violates Plaintiffs' right to a clean and healthful environment and is facially unconstitutional.”

Also noteworthy in the Oregon action is the fact that the county named as a defendant McKinsey, a global consulting firm and obviously not an energy producer. The complaint alleges that “McKinsey’s work with fossil fuel entities dates back several decades. Though McKinsey promotes itself as being ‘committed to protecting the planet,’ McKinsey counts at least seventeen mining and fossil fuel companies among its biggest clients. McKinsey’s claims of commitment to environmental protectionism stand in stark contrast to the millions of dollars it has earned assisting its fossil fuel and mining company clients in promoting themes to deny the existence and/or gravity of ACC.” The complaint goes on to plead a claim of fraud and deceit on the basis that “McKinsey has coordinated and participated in a deliberate misinformation campaign to downplay and/or outright deny the causal relationship between the GHG emissions of its members and extreme weather events like those described herein. McKinsey’s contribution to, and deception is individually and collectively (with the other Defendants) a cause of enormous harm to the Plaintiff for which this Defendant is individually and jointly and severally liable to Plaintiff.” Putting aside for the moment the potential (and likely substantial) legal hurdles confronting a municipality or citizen seeking to prevail on such a claim against an advisor (McKinsey) to an alleged primary actor (an oil and gas company), professional services firms should take note of the allegations. Not only is climate-related litigation on the rise generally, as discussed above, but climate plaintiffs are pursuing increasingly aggressive and novel theories of liability. Depending on the context, the types of allegations pled against McKinsey could underlie claims of greenwashing, aiding and abetting liability, or as here alleged primary liability against an advisor. Professional firms should carefully vet their public statements regarding climate activities, develop robust and documented support for these statements (which necessarily entails having a robust governance/data collection and assessment process), and understand how the firm’s client base and related work may be used to call into question even factually accurate climate statements.