

## In the Hot Seat: Connecticut takes on ExxonMobil Over Contributions to Climate Change

The State of Connecticut recently joined a growing list of state governments attempting to hold ExxonMobil ("Exxon") accountable for causing climate change, bringing the total number of such states to 21. Connecticut alleges that the oil & gas giant lied to the public for decades about climate science and its own contributions of harmful toxins to the environment.

The lawsuit frames the issue as one of consumer fraud and unfair advertising. Utilizing the Connecticut Unfair Trade Practices Act ("CUTPA"), Connecticut advances arguments that Exxon carried out an "ongoing, systematic campaign of lies and deception" to the public, despite knowing that continuing to burn fossil fuels would have a significant impact on the environment. Specifically, the complaint alleges that Exxon created an unfair and deceptive campaign in order to "maximize profits by selling more oil and gasoline than consumers would have purchased had the reality of climate change been disclosed."

The complaint also includes allegations of "greenwashing," a term used to describe advertising materials created to promote or imply to the public that an organization's products, aims, and policies are environmentally friendly. Exxon is accused of using its "greenwashed" advertisements to deceive consumers by downplaying its contributions to climate change and instead portraying itself as a company committed to improving climate conditions.

Connecticut contends that the case will closely examine Exxon's and Mobil's own historical internal memos, dating as far back as the 1950s, demonstrating the companies' firm understanding of the connection between fossil fuel consumption and environmental harm. In its claim for relief, the state is seeking compensation for past, present, and future harm from climate change.

This case tees up a potentially interesting coverage issue – whether the allegations of conduct that is intentional in nature, made by the State of Connecticut, are covered under standard general or pollution liability insurance terms, which typically only cover accidental conduct and also exclude expected or intended injury. At least one court has addressed similar allegations. In AES Corp. v. Steadfast Ins. Co., the Supreme Court of Virginia held that an insurer had no obligation to defend or indemnify its insured, a large energy company, against a lawsuit alleging that its greenhouse gas emissions led to the destruction of an Alaskan village. 725 S.E.2d 532 (Va. 2012). The court noted that the allegations by the village were that its damages were the result of the energy company's intentional carbon dioxide emissions and, therefore, not an accident or occurrence covered by the CGL policy.

Cases in other jurisdictions are insightful. In 2019, for instance, Exxon prevailed in a New York state court against the New York Attorney General's office in a case involving similar allegations in People of the State of New York v. Exxon Mobil Corporation. (People by James v. Exxon Mobil Corporation,

119 N.Y.S3d 829 (N.Y. Sup. Ct. 2019). There, the New York AG contended that Exxon had provided false and misleading statements to investors that policies enacted to combat climate change did not create a significant risk to its oil and gas assets being subject to write-downs and also that it had used nonpublic financial assessments that minimized climate costs compared with assessments it publicly claimed using. The state court judge said that the AG failed to prove that Exxon made any material misstatements or omissions about its practices that misled reasonable investors. However, the judge said nothing in his decision was “intended to absolve ExxonMobil from responsibility” for contributing to climate change through the production of its greenhouse gas-emitting fossil fuels.

Exxon also is not the only energy company facing similar claims in courts across the country. Currently, there are similar cases being litigated in state and federal courts across the country, including the Fourth, Seventh, Ninth, and Tenth Circuits, with four filed in September 2020 alone against companies including Chevron Corporation and British Petroleum (“B.P.”). Most of these cases involve climate tort litigation encompassed as consumer fraud, securities violations, and public nuisance laws. Despite the growing number of these climate suits, the question of whether energy companies are owed coverage for these kinds of allegations and potential liabilities remains mostly unanswered. Given the tremendous potential exposure these energy giants will face in these cases, we expect more cases like [AES Corp.](#) will follow in the near future.

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[Click here](#) to see the State of New York v. Exxon Mobil Corporation decision.

[Click here](#) to see AES Corp. v. Steadfast Ins. Co.