

Southern California city presses forward on climate lawsuit against fossil fuel companies

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The state of New York may have suffered an emphatic defeat in a legal battle against ExxonMobil last week, but that has not deterred the city of Imperial Beach from pursuing its own lawsuit looking to force 18 energy

companies in the oil and coal sectors to pay for damages associated with rising sea levels.

"We're going full-speed ahead," Imperial Beach Mayor Serge Dedina said Monday. "The reality is the [fossil fuel industry](#) has caused [climate change](#) and they need to pay for it."

On Dec. 10, a New York Supreme Court Justice ruled the state's attorney general "offered no testimony from any investor who claims to have been misled" by ExxonMobil in a lawsuit that claimed the oil giant deceived investors about the impacts of climate change.

Justice Barry Ostrager's 55-page ruling not only rejected the state's claim the company committed fraud but said there "was not a single ExxonMobil employee whose testimony the Court found to be anything other than truthful" while the testimony of the state's expert witnesses was "eviscerated on cross-examination and by ExxonMobil's expert witnesses."

The case was dismissed "with prejudice," which means it cannot be reintroduced in New York.

At the same time, though, Ostrager wrote, "Nothing in this opinion is intended to absolve ExxonMobil from responsibility for contributing to climate change through the emission of greenhouse gases in the production of its fossil fuel products."

While similar, the two lawsuits are not identical.

New York looked specifically at ExxonMobil while Imperial Beach's filing names ExxonMobil and 17 other parties, including Chevron, BP, Shell, ConocoPhillips and coal companies.

Also, while the New York case accused ExxonMobil of cheating investors, the Imperial Beach suit alleges fossil fuel interests have damaged the citizens of the South Bay town. No specific dollar figure is requested but the lawsuit says climate change will lead to coastal flooding in Imperial Beach that will result in \$38 million in damages to residential and commercial buildings and erosion that will affect property valued at more than \$106 million.

"Imperial Beach is going to incur huge amounts of costs, along with all the other cities that are facing sea-level rise in California," Dedina said.

Other cities in California filing similar suits include Richmond and Santa Cruz, as well as the counties of San Mateo and Marin. In June 2018, a [federal judge](#) dismissed cases filed by San Francisco and Oakland, saying that while the dangers of climate change are "very real," the issue should be taken up by Congress, not the courts. The cities have appealed.

The Manufacturers Accountability Project, the in-house legal arm of the National Association of Manufacturers, a trade group siding with fossil fuel companies in the legal disputes, said it is time for the litigants to throw in the towel.

"These lawsuits, which are seeking to point fingers, blame and say climate change is your fault for giving us the products that we want and need are not going to solve the problem," said Phil Goldberg, the group's special counsel. "What we need to be doing is focusing all of our energies on innovating the technologies we need so we can ... reduce greenhouse gas emissions and mitigate the impacts of climate change."

In a statement after the verdict, an ExxonMobil spokesperson said, "Lawsuits that waste millions of dollars of taxpayer money do nothing to advance meaningful actions that reduce the risks of climate change."

Dedina said the lawyers working on Imperial Beach's case are working pro bono, so Imperial Beach taxpayers are not on the hook for attorney's fees.

"Going to court is nothing compared to the costs we're going to pay from sea level rise so we absolutely owe it to our residents to keep continuing forward," Dedina said.

Imperial Beach wants its case to go before a state, rather than a federal, judge. An oral argument has been scheduled for February in Pasadena.

Last year, Imperial Beach joined Chula Vista and the Port of San Diego in a lawsuit against the federal government over the chronic problem of sewage and polluted water seeping over the border from Tijuana into the San Diego region.

"IB doesn't stand down to anything," Dedina said. "We are always moving forward and we will always move forward because we have nothing to lose now."

Critics of the lawsuits against fossil fuel companies say the cases take their cues from a workshop held in La Jolla in June 2012 at the Scripps Institution of Oceanography. Organizers of the meeting included the Climate Accountability Institute, the Union of Concerned Scientists and then-UC San Diego professor Naomi Oreskes.

A 36-page report delivered after the workshop wrapped up said attendees discussed legal strategies used in the 1990s by states to wrest billions from tobacco companies and how that could apply to climate change and major fossil fuel companies.

Last month in an interview with E&E News, Oreskes said she didn't want to comment on the details of the New York case but the "only thing

I could say is that the tobacco industry won a lot of cases until they finally lost. And if New York state loses this case for whatever reason, I don't think that's the end of this story."

Goldberg said, "Every business can be concerned that if one day they are on the other side of a political agenda that they're going to get sued for not going along with whatever it is that a self-selected group decides is the solution they want."

Similar lawsuits have also been filed by the states of Massachusetts and Rhode Island.

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