

TESTIMONY OF SHARON Y. EUBANKS
FORMER DIRECTOR, U.S. DEPARTMENT OF JUSTICE TOBACCO LITIGATION TEAM

BEFORE THE UNITED STATES SENATE COMMITTEE ON THE BUDGET

Thank you very much for this opportunity to speak with you about climate change liability. My name is Sharon Eubanks, and I was lead counsel for the United States in the federal government's racketeering case against the tobacco industry. I had day-to-day responsibility for preparing, developing, and ultimately bringing to trial the federal government's case against the tobacco industry during 2004 and 2005.

Following a 9-month trial in federal district court, Judge Gladys Kessler ruled in favor of the Justice Department, finding the tobacco industry defendants liable for racketeering violations, spanning a period of 50 years. Judge Kessler's detailed factual findings in the tobacco case reveal striking similarities with the behavior of the petroleum industry. For example, Judge Kessler found that the tobacco companies engaged in a massive public relations campaign to fraudulently deny and distort the health consequences of smoking and second-hand smoke. Both industries funneled money into promoting fake science. Exxon knew the reality of climate change in the late 1970s and then later invested in telling the public that climate change was not real.

Similarly, Judge Kessler found that the tobacco defendants actively concealed adverse scientific findings, entered into agreements not to conduct research, and used lawyers to control research so that it would serve the purposes of litigation and public relations. The fossil fuel industry concealed its well-known facts about the cause of climate change and instead deployed significant resources in an effort to sow doubt about the science. Both industries fight hard against regulation. The petroleum industry is quite aware of the possibility that regulations might move us toward low-carbon transportation, directly affecting their bottom line.

Both industries lied to the public and regulators about what they knew about the harms of their products, and when they knew it. The deceptive advertising and the PR of the fossil fuel industry is now under intense legal scrutiny. More than 1,800 lawsuits have been filed regarding climate liability worldwide. Many of these cases concern the misleading fake science that the industry purposely distributed to the public for decades. Denying that its product was the leading cause of global climate change, Exxon in fact knew the reality of climate change in the late 1970s and then later invested substantially in telling the public that it was not happening, that climate change was not real.

The similarities between the conduct of the tobacco industry and the petroleum industry form a solid and appropriate basis for investigating the petroleum industry. Furthermore, we should not waste any more time wringing our hands about what can be done. There exists solid evidentiary basis to move forward with a request to the Department of Justice to investigate the actions of the fossil fuel industry. Just as the Department of Justice investigated the tobacco industry and ultimately filed a civil racketeering complaint against the industry, given the similarities of the fraudulent acts, and the government's successful case against tobacco, there is adequate foundation for building a case.

Many of the cases filed against the fossil fuel industry focus on deceptive marketing in the form of “greenwashing.” This is different from green marketing – companies that have genuinely sustainable products are and should remain free to market them accurately. But the oil industry is not a sustainable business – on average, less than 1% of its capital goes into low carbon projects. This fact notwithstanding, the oil industry continues to misinform the public about their efforts to address the harms of climate change.

Little has changed in recent years; the companies continue to mislead the public, engaging in deception, greenwashing, and double-speak. What we should not do is wait.

A robust and growing body of documentary evidence demonstrates that the major oil and gas companies, whose products are substantially responsible for global greenhouse emissions and the resulting climate emergency we now face, these same companies had early and repeated notice and knowledge of the climate risks. At that point in time they had plenty of time to develop ways to avoid or to reduce those risks. Instead, they chose to mount a campaign of disinformation and denial.

Just as it was the case with the tobacco industry, the petroleum companies’ internal documents tell the story. In 1998, a memo entitled “Global Climate Science Communications action plan and nicknamed “Victory” memo, outlines a multiyear, multimillion-dollar scheme to create uncertainty about well-established climate science. The plan outlined in the Victory Memo is elaborate, involving a multiyear, multimillion-dollar scheme to create uncertainty about well-established climate science. The idea was to recruit and train a team of scientists to debunk global warming on radio talk shows, press briefings, campus workshops and other types of public research.

While the petroleum industry writ large was deeply involved in deception, Exxon/Mobil was a leader in the field, following the tobacco industry’s fraud playbook:

1. Exxon/Mobil funded climate change denial long after its own scientists knew and determined that climate change was real.
2. Exxon/Mobil’s misinformation campaign was not conducted alone, rather, it associated with other groups and organizations to carry their message of doubt.
3. Exxon/Mobil mislead investors and the public about the risk of climate change.
4. This was all about the bottom line – money.

Of course, litigation as well as legislation are available tools to address climate change. Successful litigation by the states against the tobacco industry certainly paved the way for the federal government’s case. Presently, states and municipalities have also been successful in climate litigation, and there has been a worldwide surge to bring the problem of climate changes to the courtroom. Moreover, it is not unusual for legislation to follow litigation. Following the decision in the federal tobacco litigation, in 2009, the Food and Drug Administration was given the authority to regulate cigarettes.

At the core of the liability issues for the fossil fuel industry is that no company has acknowledged – just as the tobacco companies refused to acknowledge – that its product is the problem.

Thank you for your time.

I have received no financial compensation or anything of value from any person or from any organization for my time or testimony given in these proceedings. I look forward to answering your questions.

ADDENDUM: Testimony of Sharon Y. Eubanks before the House Subcommittee on Civil Rights and Civil Liberties, 10/23/2019