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Suing Oil Companies: It's Not About the Environment

BY KERRY JACKSON

In late May, a panel of federal judges resurrected a couple of previously dismissed climate change lawsuits filed by San Francisco and Oakland, and also allowed six other community-based suits to go forward. The plaintiffs aren't concerned with the environment, nor are they interested in justice. Their aim is to secure a plentiful cash flow for their governments.

> *"Governments across the state, from localities to the leviathan in Sacramento, are in difficult financial circumstances due to the sharp loss of tax revenues from the economic lockdown."*

Four years ago Heritage Foundation scholars were warning that lawsuits against oil companies were "nothing more than an old-fashioned, political mob shakedown of a deep-pocketed industry for money." A secondary goal was "to get energy companies to stop giving money to free-market institutions that the left doesn't agree with."

The California climate lawsuits, filed by the cities of San Francisco, Oakland, Richmond, Santa Cruz, and Imperial Beach, and San Mateo, Marin, and Santa Cruz counties, are scarcely different from the lawsuits filed against tobacco companies in the 1990s. That litigation wasn't intended to snuff out smoking and improve health — it was a squeeze, "no better than extortion," Cato Institute scholar Robert Levy wrote two decades ago.

"The playbook is well known," says Jennifer C. Braceras, director of the Independent Women's Law Center. "Find a public health crisis; target the deep pockets of the manufacturers of a legal product; and extort enormous settlements, while also imposing strict new rules on legal activity."

The 46 states that sued the tobacco industry settled with the defendants in 1998. The manufacturers agreed to cough up $246 billion over the next 25 years just to get things started on a plan in which they make payments in perpetuity. Through 2017, the companies had paid almost half, nearly $120 billion, to the states and territories that were parties to the master agreement, and more than $25 billion to the four states that set up separate arrangements.

Accounts at the time said the lawsuits were brought to force the industry to pay for the health issues caused by tobacco so state governments wouldn't have to. But once politicians get their hands on money, previously stated objectives are forgotten.

In 2007, about a decade after the settlement, the federal General Accountability Office found that 22.9% of the dollars sent to the states in fiscal years 2000 through 2005 covered budget shortfalls, 7.1% was dedicated to general purposes, 6% was spent on infrastructure, and 7.8% went to "other" expenditures.

More recently, a New York Times op-ed documented cases in which settlement dollars were spent on shipping docks in Alaska, and a county building and jail in New York, while in North Carolina, tobacco farmers raked in $42 million "for modernization and marketing." We also know Nebraska has made "inappropriate use of tobacco settlement funds," and Louisiana "spends less than 3% of tobacco revenue on anti-smoking programs."

"Nearly all states have diverted the money to their general funds, with their anti-tobacco programs underfunded and neglected," says MedPage Today.

It's not as if a fresh set of circumstances required the states to move settlement money to unrelated expenditures. They knew they could allocate the funds anywhere they wanted to because, says the GAO, "the Master Settlement Agreement imposed no restrictions on how states could spend their payments, and as such, the states have chosen to allocate them to a wide variety of activities."

Is there reason to believe the local California governments suing the oil industry would spend every dollar from a settlement or a jury's award on climate-caused damage and to mitigate its future effects (leaving aside the bigger and still-unsettled question regarding the extent of fossil fuels' impact on the climate)?

No, there isn't. Politicians haven't changed much in the last two decades. For instance, court documents show that "a Rhode Island official acknowledged in 2019 that the state's climate lawsuit against ExxonMobil is partially designed to secure a steady stream of income for the state," the Daily Caller reported earlier this year.

Neither have lawyers changed. Some of the attorneys suing oil companies "are the same lawyers who successfully extracted massive settlements from the tobacco companies," says Braceras.

Governments across the state, from localities to the leviathan in Sacramento, are in difficult financial circumstances due to the sharp loss of tax revenues from the economic lockdown. They're looking for money anywhere they can find it. But suing oil companies using a questionable claim to erase decades of spending mistakes and to soften the shock of a crisis should outrage Californians. It's treasure hunting on someone else's property.

Kerry Jackson is a fellow with the Center for California Reform at the Pacific Research Institute.