Battling for Big Oil: Manufacturing Trade Group Leads Assault on Climate Suits

The National Association of Manufacturers has taken a lead role in battling climate suits against the oil industry, similar to its defense of tobacco companies in their liability battle. Photo credit: Getty Images

By Karen Savage

In its fight to stave off a wave of climate change-related lawsuits, the fossil fuel industry has found a vocal and unapologetic ally in the National Association of Manufacturers (NAM). The 123-year-old trade group represents a wide range of the nation’s manufacturing companies, but it has frequently gone to bat for select segments of its membership during major liability battles. Currently, it is Big Oil’s staunchest defender.
The group has filed briefs defending oil companies in liability lawsuits, launched campaigns to discredit the communities filing them, and has worked to stop shareholders from pressing the oil companies to disclose climate risks. In these roles, NAM has put itself front and center in the effort to keep fossil fuel companies from being held liable for their role in climate change, and from paying for the related damages that will run in the hundreds of billions of dollars to communities across the country.

"Taxpayer resources should not be used for baseless lawsuits that are designed to enrich trial lawyers and grab headlines for politicians," Lindsey de la Torre, executive director of NAM’s spinoff group, the Manufacturers’ Accountability Project (MAP), said in a statement [https://mfgaccountabilityproject.org/category/voyager-statements/age/3/ and coordinated a public relations [https://www.industrydocumentslibrary.ucsf.edu/tobacco/2018/06/12/map-launches-nd-campaign-endorse-mayor-de-blasio-attack-manufacturers] campaign [https://thehill.com/opinion/energy-environment/417416-suing-american-manufacturers-calling-them-a-public-nuisance-wont] of the矛tics business in climate litigation, said Sharon Eubanks, a former Department of Justice lawyer who led the government’s racketeering case against the tobacco industry, and is the co-chair of the firm’s public policy group.

Some say Shook, Hardy & Bacon went beyond [https://thehill.com/opinion/judiciary/364125-activist-litigation-against-manufacturers-has-gone-too-far] initiatives [https://www.industrydocumentslibrary.ucsf.edu/tobacco/results/#q=%22national%20association%20of%20manufacturers%22&h=%7B%22hideDuplicates%22%3Atrue%2C%22hideFacets%22%3Atrue%2C%22hideFilter%22%3Afalse%7D] in several cases along with their clients, charging them with deceiving the public by fraudulently concealing the health effects of smoking. Oklahoma’s attorney general called Shook, Hardy & Bacon’s lawyers for defending the tobacco industry, and is the co-chair of the firm’s Public Policy Group.

Eubanks said the company’s lawyers “played an absolute central role in the creation and perpetuation” of the companies’ “fraudulent schemes,” calling it a “sad and disgusting chapter” in the legal profession.

Even before Goldberg was hired, MAP had launched an offensive against climate suits, filing friend-of-the-court briefs and intervening in a landmark constitutional suit brought by 21 young people against the U.S. government. MAP has also submitted public records requests [https://mfgaccountabilityproject.org/category/voyager-statements/age/3/] and coordinated a public relations campaign [https://thehill.com/opinion/energy-environment/417416-suing-american-manufacturers-calling-them-a-public-nuisance-wont] of the矛tics business in climate litigation, said Sharon Eubanks, a former Department of Justice lawyer who led the government’s racketeering case against the tobacco industry, and is the co-chair of the firm’s public policy group.

"It’s very similar what they’re doing, only the tobacco industry at least didn’t come right out and say ‘We’re going to target these lawsuits directly,’" Eubanks said. "They did so indirectly. But NAM and MAP they’re like: ‘We’re targeting these lawsuits directly.’"

"Playing both sides of the fence" text "Battling both sides of the fence: Manufacturing Trade Group leads Assault on Don%27s Climate Suits" (https://mfgaccountabilityproject.org/category/voyager-statements/age/3/) and coordinated a public relations campaign [https://thehill.com/opinion/energy-environment/417416-suing-american-manufacturers-calling-them-a-public-nuisance-wont] of the矛tics business in climate litigation, said Sharon Eubanks, a former Department of Justice lawyer who led the government’s racketeering case against the tobacco industry, and is the co-chair of the firm’s public policy group.

"It’s sort of an outsourced arm of those firms, rather than doing it all on their own, there’s strength in numbers," Barnett said. "There’s some efficiency to having one centralized legal defense that attacks on behalf of the whole industry in addition to each of the individual firms taking on these issues."

No Stranger to the Liability Battleground

The addition of Goldberg to MAP’s legal team indicates a continuing commitment to defending NAM’s fossil fuel defendants. In addition to being the go-to law rm for tobacco companies, Shook, Hardy & Bacon [https://www.shb.com/services/service=energy] has a long history with NAM, partnering [https://ccbjournal.com/articles/9045/shook-hardy-bacons-civil-justice-reform-initiatives-as-far-back-as-2007-to-support-firms-facing-product-liability-suits] as far back as 2007 to support firms facing product liability suits. The rm worked so closely [https://www.justice.gov/sites/default/files/crimes/statistics/age/2018/06/12/map-launches-ad-campaign-endorse-mayor-de-blasio-attack-manufacturers] with the tobacco industry to attack the science [https://www.thepitchkc.com/news/article/20603947/devils-advocates] of the矛tics business in climate litigation, said Sharon Eubanks, a former Department of Justice lawyer who led the government’s racketeering case against the tobacco industry, and is the co-chair of the firm’s public policy group.

"The Department of Justice] considered suing them and making them defendants because they were so much a part of the RICO violations we alleged," Eubanks said.

"They’re not even hiding from anything, they’re just saying ‘we want to influence what’s happening in these cases the best way that we can way.’"

She said she’s seen no evidence that MAP’s tactics are illegal, but they are similar to some of what was alleged in the tobacco cases.

Goldberg did not respond to a request for comment. In a NAM press release he said, “The NAM and its Manufacturers’ Accountability Project are the tip of the spear in the fight against the wave of unfounded public nuisance lawsuits targeting America’s manufacturing.”

Goldberg said climate liability suits get in the way of finding real solutions and “are more about politics than addressing the global challenge of climate change.” He did not elaborate on what these solutions are or how municipalities will pay for the infrastructure needed to protect their residents, costs that are projected to run into the hundreds of billions of dollars nationwide.

A History of Advocating for Fossil Fuel Members

NAM, which was founded [https://www.nam.org/about/history-of-the-nam/] in 1895, describes itself as the largest manufacturing association in the United States. It does not publicly disclose its membership list, but its board includes some of the oil and gas industry’s most powerful executives.


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Chapman and Exxon did not respond to a request for comment.

For decades, the association has promoted climate denial, founding the Global Climate Coalition in 1989 and sharing offices until 1992 while the Global Climate Coalition and its members—primarily energy companies and automobile manufacturers—worked to cast doubt on what was fast becoming overwhelming scientific evidence that the burning of fossil fuels drives climate change. The goal was to change the public’s perception and cast doubt on climate science.

The Global Climate Coalition was disbanded in 2002 after several of its largest corporate members pulled out under public pressure to accept that climate change—and the projected catastrophic effects—was an undeniable global threat.

More recently, NAM’s focus has shifted from promoting climate deception to defending member companies from efforts to hold them accountable for years of deceiving the public and damaging the climate.


Calling the suit a “direct threat to businesses,” the trade associations said the “significant reduction in [greenhouse gas] emissions would cause a significant negative effect on [their] members by constraining the sale of the product they have specialized in developing and selling.” When the court asked intervener attorneys to explain their views on climate change, NAM quickly backed out (https://www.climateliabilitynews.org/2017/07/13/the-kids-climate-case-against-the-u-s-government-a-timeline/).

When the liability lawsuits began—and now total more than a dozen from communities across the country and one state (Rhode Island)—NAM responded by launching (https://www.climateliabilitynews.org/2018/01/10/exxon-california-climate-lawsuits/) MAP to “set the record straight and highlight foundations and other activists who have sought to undermine and weaken manufacturing in the United States” by engaging in climate change-related litigation.

MAP came out swinging, claiming that then-New York attorney general Eric Schneiderman’s use of the Martin Act to investigate Exxon for possible climate change-related fraud was “politically motivated.” It demanded (https://www.climateliabilitynews.org/2018/02/13/timmons-mayor-de-blasio-owes-new-workers-apology/) New York Mayor Bill de Blasio apologize to New Yorkers for using an outside firm to file its suit against five major oil companies and launched a campaign to highlight what it called de Blasio’s “politically-motivated attacks on manufacturers.”

Eubanks said that rhetoric doesn’t add up.

“Lawsuits to enforce the law, to ensure that people are following the law and it takes you out of a political process and puts you before a neutral person, a judge,” she said, adding that Shook, Hardy & Bacon also does a good bit of political lobbying.

“They say, ‘We think these matters should be handled by legislation, not litigation, and by regulations that will come out of any statutes that are enacted,’” she said. “Then they fight real hard to make sure there are no statutes that come down the pike because regulations come out of regulatory authority, so it sounds real good, but that’s wholly inconsistent with their approach.”

NAM and MAP have made a big deal out of the potential for future RICO charges against the fossil fuel industry—the same racketeering laws that ultimately ensnared the tobacco industry—and contend that a conspiracy is being waged on the other side by a “group of politically motivated activists” who are “trying to take down America’s energy manufacturers.”

“Right now, there are no plaintiff attorneys, there are no plaintiff lawsuits, there are no plaintiff cases,” Chapman said in an interview. “There are no plaintiff foundations, no plaintiff activist groups, no plaintiff climate change organizations, no plaintiff climate energy organizations over climate change,” said (https://www.facebook.com/NAManal/) NAM president and chief executive Jay Timmons in NAM’s State of Manufacturing Address last week in Houston. “These lawyers—they want to get rich at the expense of manufacturing workers.”

To try and substantiate its view that litigation is part of a vast conspiracy—and in what some say is an attempt to have a chilling effect on municipalities that launch lawsuits—MAP has also submitted extensive public record requests to plaintiffs in the suits, seeking documents and communication between the municipalities and their attorneys, prior records requests that include those attorneys, certain communication regarding the defendant companies and communication between the municipalities and billionaire Tom Steyer, founder of NextGen, a progressive organization working to stem the risks of climate change for future generations.

When Rhode Island Attorney General Peter Kilmartin filed the first state-level suit (https://www.climateliabilitynews.org/2018/07/02/rhode-island-climate-liability-suit/), last July, MAP denounced it.

Eubanks said ensuring manufacturers abide by state law is exactly what attorneys general should do.

“We have consumer protection statutes, we have consumer protection agencies, that’s part of what makes this country great,” Eubanks said. “You can’t just come in and roll over people with deceptive and unfair methods of competition, you can’t just lie about things without consequences and we have organizations to protect that. That’s what I find so alarming about this—the whole idea that there’s something wrong with enforcing the law.”

NAM did not respond to a request for comment. De la Torre, could not be reached for comment.

Perhaps NAM’s biggest attack on liability suits thus far has been its accusations against several California municipalities.

To try and bolster that allegation, NAM—with along with the industry ally Competitive Enterprise Institute (https://cei.org/sites/default/files/Final%20SEC%20Tip%20Clean.pdf)—asked the Securities and Exchange Commission to investigate (https://www.climateliabilitynews.org/wp-content/uploads/2018/04/SEC-Letter_3_27_18-3.pdf) whether several cities and counties that filed climate change lawsuits misused investors when they stated in bond offerings that they couldn’t predict the impacts of climate change.

A report (https://www.climateliabilitynews.org/2018/04/30/california-climate-lawsuits-municipal-bond-rec/) by the former chief of the Securities and Exchange Commission’s municipal bonds division later found the municipalities did not mislead potential investors.

In another instance, NAM partnered with the Chamber of Commerce to back Exxon, filing (https://www.nam.org/uploadFiles/NAM/Site_Content/Advocacy/The-Center-for-Legal-Action/Briefs-Online/2018/ExxonMobil2020%20Healey%202nd%206%20Cir%202009102018.pdf) a friend-of-the-court brief in the oil giant’s quest to stop investigations by the attorneys general of California, New Jersey, Massachusetts and New York.
New York has since filed a lawsuit against Exxon based on that investigation, alleging the oil giant for years deceived investors by deliberately downplaying the climate risks to its business and long-term financial health. The Supreme Court recently ruled against Exxon's attempt to stop Massachusetts' investigation, which now continues.

This is the first in a series of articles on the trade group coordinating opposition to climate liability suits.

This story has been update to more accurately describe the review which found California municipalities did not mislead potential investors.

NEXT UP:

Targeting Investor Activism to Hold Big Oil Accountable

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