Fossil fuel companies are already grappling with the risks posed by climate change, from the physical threats of extreme weather to the challenge of switching to cleaner energy. Now they have a new item rising up their list of worries: liability lawsuits.

Over the past two years, a growing number of legal cases in the US — brought by cities, counties, and the State of Rhode Island — are seeking damages from energy companies for a litany of climate-related problems.

Baltimore wants compensation for the cost of retrofitting storm drains to prepare for worsening storms. In San Francisco, the city says it will cost $5bn to upgrade the city’s sea wall to prepare for higher sea levels. Meanwhile, Rhode Island expects coastal properties worth $3.6bn to be under threat by the end of the century.

Taken together, these lawsuits amount to a legal onslaught that climate activists hope will have a profound financial impact on oil and gas producers, by imposing huge penalties. The example they draw on is the years of litigation against tobacco companies that culminated in a settlement guaranteeing $206bn in payments to 46 US states over the first 25 years.

Sheldon Whitehouse, a democratic Senator from Rhode Island known for his climate activism, said the threat of litigation is a major worry for oil companies at the moment. “They are frightened at the prospect of liability at what they have done, and they are scared of courts.”

He said the comparison with the tobacco lawsuits is apt. “If you … pop out the word tobacco, and put in the word fossil fuels; pop out the word health, and put in environmental harms. The complaint writes itself,” he said.

One crucial difference, however, is that the climate cases are not yet on the scale of the tobacco litigation — none of the lawsuits have succeeded yet, and several have been thrown out.

At present there are more than a dozen climate liability cases under way in the US: 10 brought by counties, four brought by major cities (New York City, San Francisco, Oakland, Baltimore) and one
by a state (Rhode Island). The next cities to file climate-related lawsuits are likely to be Honolulu, and Washington, DC, which has already put out a call for lawyers.

However the energy companies, and the lobby groups that represent them, are sceptical that these cases have merit.

“There has been a long history of this litigation that has not been successful, and for good reason,” said Phil Goldberg, special counsel at the National Association of Manufacturers, a lobby group in DC whose members include fossil fuel companies.

“The fundamental flaw with these lawsuits is that the companies didn’t do anything wrong . . . they are selling a useful product,” Mr Goldberg added. “The whole thing is just a red herring.”

But he stops short of dismissing the lawsuits altogether. “Anytime you are sued, you take it seriously,” he said. The growing number of cases has prompted the association to set up a new wing — the Manufacturers’ Accountability Project — to address them.

At the same time, some energy companies, including Shell and BP, have poured millions of dollars into lobbying for a new carbon tax bill that would also include a liability waiver for fossil fuel products sold in the past, which would make most of these lawsuits vanish.

While the details of each case vary, the broad thrust is similar: to extract compensation from oil and gas producers to cover the cost of adapting to the effects of climate change.

Most lawsuits name the biggest producers — such as Exxon, BP, ConocoPhillips, Royal Dutch Shell and Chevron — as defendants, though the number of companies named ranges from five to 37.

“These are lawsuits by injured public entities against specific wrongdoing companies, seeking money damages . . . these are about compensation for past behaviour,” said Vic Sher, partner at Sher Edling, a private law firm that represents plaintiffs in 11 of the cases. “The cost of dealing with climate change to communities is just enormous.”
The history of previous climate liability lawsuits in the US suggests today’s cases may face an uphill battle. In several landmark cases over the past decade, judges sided with the oil companies, including one key ruling that corporations cannot be held liable for their greenhouse gas emissions in federal court.

In one high-profile lawsuit a decade ago, the Alaskan village of Kivalina asked oil producers to pay for the cost of relocating the village because it was threatened by rising sea levels. The court ultimately ruled against Kivalina, saying the case could not be heard under federal common law.

However climate lawyers say that things have changed with the latest batch of cases.

Not only have these cases been filed in state rather than federal courts (which means the ruling in Kivalina and other similar cases are not directly applicable) but they also benefit from advances in the scientific understanding of climate change and its impact, they say.

“The new developments are the scientific ones,” said Mr Sher. “What is new is our ability to quantify the relationship between emissions and climate change-related impacts, like sea level rise — and to attribute the emissions to particular companies.”

Progress so far has been mixed: the question of whether the claims should be heard in state or federal courts has occupied much of the proceedings. The lawsuits brought by San Francisco, Oakland and New York City are under appeal, having initially been thrown out.

An additional challenge for plaintiffs is that, because fossil fuels have been the engine of so much economic activity, it may be difficult to establish that energy companies, rather than the consumers, should bear responsibility. However, activists say that the companies’ knowledge of climate change and their failure to warn the public about the impact of the oil and gas they were selling creates liabilities.

The cases are too preliminary to cite dollar figures for damages, while estimates of the cost of climate change across the US run into the trillions of dollars.
At the same time, energy companies also face separate accusations of deceiving investors over climate risks.

Last year, the state of New York sued ExxonMobil, alleging that it misled investors — a charge the company vigorously rejects. The ongoing case is being watched closely by the rest of the industry, particularly because New York’s anti-fraud law, known as the Martin Act, is among the toughest in the country.

As for the companies, they point out that co-operation, not confrontation, would be more effective for addressing climate change.

Those named as defendants say the lawsuits are without merit, misguided, and not constructive

“We do not believe the courtroom is the right venue to address the global challenge of climate change,” said Shell, while Exxon commented that. “Addressing climate change in a meaningful way requires global participation and actions by governments, corporations and consumers.”

Chevron said that similar suits had been “consistently dismissed” and that it was focused on “real solutions and meaningful actions such as investing in technology and low carbon business opportunities”.

Despite the challenges, the plaintiffs do have one advantage: whereas the energy companies have to fight every case, the plaintiffs only have to win one, said Richard Wiles, executive director of the Centre for Climate Integrity, a non-profit that supports plaintiffs in climate litigation.

“The real strategy is, you have to file more cases in more places,” he explained. “If we win one, that creates the precedent, then we begin the cascade. That is how tobacco was won.”

### Key climate lawsuits in the US

**APR 2007**
In Massachusetts v Environmental Protection Agency, the Supreme Court rules that carbon dioxide is a type of pollution that should be regulated by the EPA under the Clean Air Act. Previously carbon dioxide was not regulated at the federal level

**FEB 2008**
The Alaskan village of Kivalina files suit against ExxonMobil and other oil producers, asking for monetary damages due to the flooding of the village. Kivalina’s arguments are ultimately rejected by the courts

**JUN 2011**
The Supreme Court rules in AEP v Connecticut that power companies cannot be held liable for damages caused by their carbon dioxide emissions, because CO2 is regulated by the federal government

**AUG 2015**
In Juliana v US, a group of teenagers sue the US government for its lack of action on climate change, alleging that the US “climate system” is critical to their rights to life, liberty and property. The case is ongoing

**JUL 2017**
Three localities in California (San Mateo County, Marin County, and the city of Imperial Beach) file lawsuits against oil companies, charging them with nuisance and negligence under California state law due to the climate impact of their products

**SEP 2017**
San Francisco and Oakland file climate liability lawsuits against oil producers, seeking damages to cover the cost of dealing with rising sea levels and other climate impacts. These cases were tossed out in June 2018, but now that decision is under appeal.

**JAN 2018**
New York City files a liability lawsuit against oil companies, claiming damages and seeking compensation for climate-related infrastructure spending. The case was thrown out, and the dismissal is under appeal.

**JUL 2018**
Rhode Island and Baltimore file climate damages cases (separately) against fossil fuel companies, asking for damages to help pay for the harmful effects of climate change.

**OCT 2018**
New York attorney general files a fraud case against ExxonMobil, alleging it deceived investors over the risks that climate change regulations posed to its business.

**MAR 2019**
A group of 10 states including New York and California file a 'friend of the court' briefing in the climate liability cases brought by San Francisco and Oakland, as the cities appeal the dismissal of their lawsuits.

*Additional reporting by Anjli Raval.*