

INSIGHT: Connecting Climate Change Nuisance Suits to Insurance Recovery

Cities, counties, and states have been suing fossil fuel companies to pay for the costs to mitigate and remediate the effects of climate change. Paley Rothman attorneys say energy companies should look to the insurance industry as an example of how to avoid potential pitfalls involving language use and perceptions.

Over the past few years a wave of lawsuits has sought to hold fossil fuel companies responsible for the societal costs associated with climate change.

For the most part, these lawsuits have been brought by cities, counties, and one state in which the plaintiffs have pressed novel claims of public nuisance and other state laws arguing the fossil fuel companies should pay for costs associated with, among other things, infrastructure projects undertaken to mitigate and remediate the effects of climate change.

To date, the disputes have mostly centered on whether they will be litigated in state or federal court, although discovery is ongoing in some of the remanded state court cases.

In contesting jurisdiction, parties in climate change litigation have used a number of characterizations purporting to describe the nature of the dispute. The insurance industry may take these neutral characterizations crafted for descriptive purposes only out of context in the inevitable contest over coverage.

This is not speculation: the insurance industry already has argued that climate change is an uninsurable risk that existing policies supposedly were never intended to cover.

In short, words and perceptions matter. Energy companies can, and should, harmonize a neutral narrative that sets out the nature of the underlying claims with their insurance story. Such a narrative should take account of potential pitfalls in using certain terminology to avoid manipulation in the context of insurance coverage.

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To view the full article, visit the Bloomberg Law website: "INSIGHT: Connecting Climate Change Nuisance Suits to Insurance Recovery" by Robert Shulman and Cristen Rose, Insurance Recovery.



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