McKenna Long & Aldridge LLP
Attorneys at Law

Climate and Energy Advisory

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New Report: Leading Public Companies Alleged to Cause $6.6 Trillion In Global Environmental Harm

CONTACTS

For further information regarding the topic discussed in this update, please contact one of the professionals below, or the attorney or public policy advisor with whom you regularly work.

Christina M. Carroll
202.496.7212

Jon D. Sohn
202.496.7642

J. Randolph Evans
404.527.8330

Joanne L. Zimolzak
202.496.7375

Kristin Landis
202.496.7124

On October 5, 2010, the United Nations Environment Programme Finance Initiative (UNEP FI) and Principles for Responsible Investment (PRI) released a study assessing the cost of environmental damage in 2008. The purpose of the study is to educate large institutional investors, referred to as "universal owners", regarding the magnitude of the current and projected environmental costs that are not always included as part of the calculation of the cost of doing business. The study, conducted by Trucost on behalf of UNEP FI and PRI, is an attempt to monetize the environmental damage from problems such as climate change. UNEP FI is a unique global partnership between UNEP and nearly 200 financial institutions. The PRI organization provides a forum for investors to consider how environmental, social, and corporate governance issues can affect the performance of investment portfolios.

The Trucost study finds that in 2008, environmental damage worldwide reached almost $6.6 trillion, with the largest 3,000 public companies causing over $2.15 trillion or over one-third (35%) of the global environmental costs. The production of greenhouse gas (GHG) emissions was by far the largest contributor to these costs. The following sectors were identified as contributing the most to damages related to GHG emissions: electricity, oil and gas producers, industrial metals and mining, and construction and materials. Trucost plans to release a more detailed report on the study in early November.

According to Trucost report released on October 5, if the largest 3,000 companies do not change their business practices, the annual cost of environmental damage could reach $28.6 trillion in 2050, equating to 18% of projected GDP. GHG emissions are projected to result in over 70% of these costs. The report notes that such environmental costs could lead to higher insurance premiums and taxes and affect asset values and fund returns.

What do this report and these numbers mean for climate change liability? Plaintiffs with climate change-related claims will likely use the information contained in the report (and the underlying data) to bolster causation arguments that certain companies and/or business sectors have materially and substantially contributed to climate change and that such contributions can be quantified in order to assess liability. This study may provide a useful building block for those attempting to establish and document a causal connection between specific GHG emissions and observed damage, something which the plaintiffs in current climate change lawsuits have thus far been unable to do. As a result, the top 3,000 public companies, particularly those falling within the identified sectors, could see an increase in damages claims resulting from their GHG emissions.

This report also puts institutional investors, such as fund managers, on notice of the implications of their failure to manage these projected environmental costs and could eventually lay part of the groundwork for claims against them for mismanagement. Shareholders may used the report or underlying data for the report in connection with (a) shareholder resolutions demanding that corporations address climate change (or other environmental issues) within their operations or portfolios or (b) demands that corporations develop or revise their positions on public policy related to climate change (or other environmental issues). The report or underlying data could also be used for NGO advocacy efforts seeking to pressure institutional investors to divest or diversify their portfolios based on climate change or other environmental issues. The risk of lawsuits, shareholder actions, and NGO campaigns focused on corporations and investors is potentially higher because there is no U.S. legislation, with a potential preemptive effect, to address climate change mitigation on an economy-wide basis.

From the perspective of insurers, conditions are ripe for a potential increase in climate change-related claims. More insureds may seek coverage under both CGL and environmental policies, and defense costs and coverage litigation related to climate change-related claims could skyrocket. In addition, if and when the 3,000 public companies discussed in the study are specifically identified, those companies may attempt to report potential claims to their insurers based on their GHG emissions and potential for liability. Insurers should plan to closely monitor their at risk portfolios, as well as the sufficiency of any notice provided. Insurers also should consider the implications of this report on their institutional investment functions.

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