

Energy & Sustainability Litigation Updates — May 2024

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Regulatory Update

On March 6, 2024, the SEC issued its long-awaited climate disclosure rule, which mandates the disclosure of climate-related risks and Scope 1 and Scope 2 greenhouse gas emissions, among other things. The rule was immediately challenged from both conservative and liberal perspectives, including by coalitions of various states. These assorted challenges were consolidated for review in the Eighth Circuit (selected by lottery), which is generally considered to be a conservative court. On April 4, 2024, the SEC voluntarily stayed the climate disclosure rule pending judicial review while maintaining that the SEC would “continue [to] vigorously defend[] the [mandatory climate disclosure rule’s] validity in court.”

Litigation Update

Recently, a Texas federal court denied a motion to dismiss in an ERISA lawsuit featuring allegations that an employer’s 401(k) plan breached its fiduciary duty by utilizing an investment manager who pursued ESG objectives rather than exclusively focusing on maximizing financial benefits. Although only a single decision (and one from a conservative court), this decision could have a significant impact due to the recent proliferation of lawsuits alleging violations of fiduciary duty based upon a supposed adherence to ESG factors rather than financial ones, and could indeed inspire future lawsuits featuring similar allegations.

International Developments

On April 9, 2024, the European Court of Human Rights issued a decision holding that Switzerland violated the human rights of its citizens by failing to adequately protect them from climate change. Significantly, a failure to take adequate steps to combat climate change has now been held to constitute a human rights violation. Even though the European Court of Human Rights recognized that governments need a degree of flexibility in achieving the goal of combatting climate change, it seems likely that this decision will inspire similar lawsuits seeking to compel governments to take action.

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