

# Hawaii Supreme Court Rules That Insurance Policies Do Not Cover Fossil Fuel Companies' Climate Change Damages Caused by Greenhouse Gas Emissions

Article By:

Jacob H. Hupart

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This week, the Hawaii Supreme Court--in response to certified questions of law from the federal district court in Hawaii--held that the insurance policies purchased by fossil fuel companies in Hawaii would not provide coverage for climate change damages attributable to greenhouse gas ("GHG") emissions. Specifically, the Hawaii Supreme Court held that "GHGs are 'pollutants' under the insurance policies' pollution exclusion clause [and so] [t]he exclusion bars coverage for emitting (or misleading the public about emitting) GHGs." Based on this decision, it is less likely that fossil fuel companies will be able to rely upon insurance coverage to address the array of proliferating lawsuits claiming tort damages due to climate change and greenhouse gas emissions.

(This question arose in the context of tort lawsuits filed by local governments in Hawaii against major fossil fuel companies seeking damages in connection with climate change. Those lawsuits continue to proceed, although a decision on the merits is likely years in the future.)

While the decision by the Hawaii Supreme Court is specific to the particular insurance policies at issue, it will likely be influential as other courts consider similar issues. Nonetheless, the ultimate impact of the decision remains unclear. Although the lack of insurance coverage may increase pressure on the fossil fuel company defendants, who will be compelled to rely upon their own resources to fulfill any judgment, the lack of potential insurance proceeds may also discourage plaintiffs from filing lawsuits in the first place, as the absence of insurance could severely limit any potential damages obtainable after a complicated and time-consuming lawsuit. Nonetheless, this decision will certainly reverberate among the various parties to these climate change tort lawsuits as they contemplate legal strategy.

AIG isn't obligated to cover a lawsuit accusing a Honolulu-based Sunoco subsidiary of contributing to climate change, the Hawaii Supreme Court ruled, saying a pollution exclusion in the oil giant's policy encompasses greenhouse gas emissions. Answering certified questions from a Hawaii federal court, the state's top court on Monday concluded that Aloha Petroleum could not reasonably expect coverage for two underlying climate change suits because greenhouse gasses are "so clearly pollutants."

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