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Energy & Sustainability Litigation Updates — November 2024

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Regulatory Updates

Despite the recent disbandment of the SEC's Climate & ESG Task Force, the SEC is continuing to pursue enforcement actions concerning environmental issues, including greenwashing. Notably, over the past several weeks, the SEC has fined an investment adviser $4 million for the improper labeling of ESG funds and imposed a civil penalty of $1.5 million on a manufacturer for inaccurate statements regarding the recyclability of its products. Significantly, with respect to the enforcement action against the investment adviser, the SEC noted that the reliance of the investment adviser on two third-party vendors to screen its investments was insufficient — greater diligence was required.

California Governor Newsom has signed S.B. 219, which does not extend the deadlines for compliance with California's climate disclosure regulation, although it does afford the state agency tasked with promulgating the regulations an additional six months to do so. (The California legislature rejected Governor Newsom's suggestion to delay compliance for two years.) Unless the California climate disclosure law is successfully challenged or otherwise stayed by the courts (and it should be noted that a challenge is pending), the companies subject to its requirements will have to comply in 2026.

Litigation Updates

The Hawaii Supreme Court recently issued a decision that the insurance policies purchased by fossil fuel companies in Hawaii would not provide coverage for climate change damages attributable to greenhouse gas emissions. Specifically, the court ruled that greenhouse gas emissions "are 'pollutants' under the insurance policies' pollution exclusion clause." This holding, while limited to the specific insurance contracts at issues, makes it less likely that fossil fuel companies will be able to rely upon insurance coverage to address the array of proliferating lawsuits claiming damages attributable to climate change and greenhouse gas emissions.

This past August, a federal district court in Missouri had issued a ruling barring the recent anti-ESG rules Missouri had enacted that prohibited investment advisers from utilizing ESG factors when making investment decisions (absent the express written consent of the client). As expected, the Missouri attorney general appealed that decision shortly thereafter. However, Missouri has now abandoned that appeal, which effectively dooms the anti-ESG rules previously championed by

Missouri (but also avoids the prospect of a sweeping ruling by the Eighth Circuit Court of Appeals that could impact other potential legislative and regulatory activity).

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