

PCI Webinar Focuses on Liability Consequences of Climate Change: Noted Expert Richard O. Faulk of Gardere Wynne Sewell Featured

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CHICAGO – With legislation pending in Congress and a new bill expected to be introduced any day, nearly 70 individuals participated in the April 27 Property Casualty Insurers Association of America’s (PCI) Webinar highlighting the liability consequences of climate change regulation.

Richard O. Faulk, partner and climate change practice leader at the Gardere Wynne Sewell law firm in Houston, provided insights into litigation risks that insurers face from their insureds’ and their own activities, and introduced concepts that insurers can use to minimize those risks.

“The legal and regulatory storm regarding climate change has arrived,” Faulk told the participants. “Within the last month alone, three significant events occurred. First, the Environmental Protection agency issued a critical finding that ‘greenhouse gases’ posed a threat to ‘health and welfare’ and commenced the process toward wholesale regulation of the U.S. economy. Congress proposed comprehensive climate change legislation that includes provisions authorizing litigation against the government and private industry by all those who ‘suffer’ from climate change. And, the NAIC voted to require insurers to submit annual ‘climate risk’ reports regarding their own operations and, derivatively, the operations of their insureds. As a result of these events and many others that preceded them, it is essential for insurers to understand the legal and regulatory issues that are present now, as well as the risks that lie ahead.”

“Climate change liabilities of insurers and insureds are among the industry’s most important emerging issues,” said David Golden, director of commercial lines for PCI. “Now that the National Association of Insurance Commissioners (NAIC) has adopted its climate risk disclosure survey, the focus shifts to what this will mean as states begin to adopt it. Through the Webinar we helped insurers become better informed not only about the NAIC requirements, but the wide range of potential impacts as lawsuits alleging injuries and damage due to climate change take hold. Climate change is a complex issue and it can bring exposures in many lines of insurance.”

In the Webinar, Mr. Faulk covered exposures in multiple lines of coverage, including regulatory liability, contractual liability, tort liability, and director and officer liability. He also explored some of the actions insurers can take to minimize those risks such as:

- Informing policyholders and regulators of compliance efforts and appropriate information
- Investigating compliance by insureds with climate change requirements
- Evaluating insureds’ carbon “footprints” and “cap and trade” opportunities
- Planning for “correlated risks”
- Assessing investment strategies as informed by climate change risks
- Reporting and updating regulating agencies

“It is important for insurers to think and act strategically,” said Mr. Faulk. “In preparing for the emerging legal and regulatory environment, insurers would do well to assess and evaluate financial exposures to climate change, evaluate corporate investment portfolios to determine sensitivity to climate change risks, and create programs that educate insureds about tools to manage risks and control costs.”

Richard O. Faulk chairs the Gardere Wynne Sewell Litigation Department and the firm's Environmental Practice Group. He also leads Gardere's Climate Change Task Force. He and his partner, John Gray, have authored one of the major scholarly papers in the area, "Stormy Weather Ahead: The Legal Environment of Global Climate Change." They recently published "A Lawyer's Look at the Science of Global Climate Change."

PCI is composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. PCI members write over \$176 billion in annual premium, 35.9 percent of the nation's property casualty insurance. Member companies write 43.8 percent of the U.S. automobile insurance market, 29.6 percent of the homeowners market, 32.8 percent of the commercial property and liability market, and 38.4 percent of the private workers compensation market.

Gardere Wynne Sewell LLP, an AmLaw 200 firm celebrating 100 years in 2009 and one of the Southwest's largest full-service law firms, has offices in Austin, Dallas, Houston and Mexico City. Gardere provides legal services to private and public companies and individuals in areas of energy, hospitality, litigation, corporate, tax, environmental, labor and employment, intellectual property and financial services.

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