National News

Study Highlights Industry's Potential Climate Change Liabilities

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Liabilities follow the insurance industry as the night follows the day. So, it's not terribly surprising to learn that a new study - "Limiting Liability in the Greenhouse: Insurance Risk-management Strategies in the Context of Global Climate Change* ? highlights just what those potential liabilities might be, and discusses the various risk mitigation strategies the industry should adopt to limit its exposures.

The 84-page report is set to appear in the Stanford Environmental Law Journal and the Stanford Journal of International Law. The authors,** Christina Ross, Evan Mills and Sean B. Hecht, summarize the conclusions of a recent "Symposium on Climate Change Risk" which examined the emerging liabilities.

In their introduction the authors point out that, while the "most widely discussed insurance-related consequences of climate change are the impacts of property damage from extreme weather events," there are also emerging liability consequences. These include insurance risks, primarily "claims of third-parties who allege injury or property damage that may be the fault of the insured." As the climate change phenomenon becomes more certain, it establishes a basis for more claims.

The article explores three major dimensions of the issue as follows: "(1) sources of climate-change-related legal liability to third parties and their nexus with insurance and law, (2) new liabilities associated with potential technological responses to climate-change, and (3) potential roles for insurers, reinsurers, and other industry actors in proactively managing climate change-related liability insurance risks for themselves and their customers."

The authors also point out why the actions of the insurance industry, which they identify as "the world's largest," is so important. Those actions/inactions "will no doubt be key to the ultimate success of society's overall response." That doesn't appear to be an exaggeration, given the growing concerns industry leaders have expressed (for some of them go to the IJ web site and search "climate change" or "global warming").

The list of potential liabilities covers virtually all of the industry's activities. The study lists the following broad categories:
? Commercial general liability claims, which include negligence, personal injury, and third-party business interruption via disruptions in supply chains, transportation, utility services, and communications;
? Product liability claims associated with materials or products that contribute to climate change;
? Environmental liability claims for emitters of greenhouse gases based on various impacts of climate change itself, or, secondary consequences associated with toxic releases, mold, and other consequences of the physical impacts of climate change;
? Professional liability claims, e.g., corporate directors and officers liability for those involved as emitters or arising from failure to safeguard shareholder value from the impacts of climate change;
? Political risk liability claims triggered by new government policies (e.g., carbon levies); and,
? Personal and commercial vehicle liability claims from increased roadway accidents related to adverse weather.

While some of those categories may not produce a great deal of increased liability, one only has to look at the growth in asbestos or mold claims to realize the potentially devastating impact of climate change related environmental claims or product liability lawsuits. Unless some remedial action is taken, those claims, which are potentially global, could surpass asbestos claims.

The industry is facing a double whammy. It has so far focused on handling the claims from increasingly violent weather related events ? mainly property losses. But this study points out that the potential liability claims may well exceed those directly related to hurricanes or other costly natural disasters.

The industry's "material liability exposures" involve "both the causes and consequences of climate change and the costs of adaptation," the report continues. The claims can be direct, "a function of insurers' handling of shareholder and customer interests, as well as indirect, when insurers are payers of claims faced by others."

The study, however, is not all gloom and doom. The authors state that their "primary goal" is to "identify practical risk-management strategies that will allow insurers and other businesses to preemptively mitigate their exposure to climate-change liability." Excessive litigation would in effect equal a "market failure that can be avoided, at least in part, by adequate regulation, proactive reductions of greenhouse gas emissions, and adaptive strategies to prevent damages from climate change."

The report reviews current assessments concerning climate change, particularly the increasingly deadly hurricanes and the latest report from the Intergovernmental Panel on Climate Change (www.ipcc.ch). The picture it paints is not encouraging.

There are steps, however, that the industry, as well as its clients, could and should take to at least moderate the potential liabilities. The report identifies some of them under the following headings:
-- Improved Analysis, Disclosure, and Reporting of Climate Change Related Risk
-- Incorporation of Climate Considerations in Rating Risk
-- Tightened Terms and Conditions
-- Introduction of Innovative Insurance Products and Services
-- Recommended Best Climate-Protection Practices for Insurers

In conclusion the authors point out that the "insurance sector is uniquely positioned between the two ends of the climate-change spectrum?the causes and impacts." It covers "carbon-intensive industries as well as homes, autos, and pollution-emitting airplanes that are some of the primary causes of anthropogenic greenhouse gas emissions." At the same time the insurance industry and their "trade allies" are exposed to "the liabilities faced by customers of these insured businesses, and to "in-house' liabilities potentially arising from their own actions in responding to the challenge."

Modern and effective risk management is the key to avoiding a whirlwind of climate change related liability claims. The industry has already applied its expertise in the property area, as well as in such fields as product liability and kidnap, ransom, extortion coverage. The emphasis is on claims avoidance rather than claims payment.

As the authors point out, such "proactive approaches are likely to yield a 'win-win-win' situation, in which insurers, policyholders, and third parties affected by climate change-related externalities will all benefit from decreased risk." In the notes and the addenda to the report, the study gives a number of specific examples of the steps insurers, brokers, agents and their clients have taken to decrease the possibilities of costly claims.

The insurance industry should take pride in the fact that, while many governments and companies refused to recognize the existence and importance of the changing weather patterns, it took the lead in establishing departments and funding studies that have produced the scientific data needed to confirm the threats climate changes pose.

It has, as the authors of the report recognizes, "perhaps more than any other institution, the power to set the stage for enduring and significant contributions to solving the problem of global climate change. In doing so, liability insurance considerations could prove to be as important as the more widely studied property insurance consequences of climate change."

*A "pre-print" of the report can be downloaded at:
http://eetd.lbl.gov/EMills/PUBS/PDF/Liability-in-the-Greenhouse.pdf

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