



CADWALADER
CLIMATE
Connecting Climate Change and the Law

Republican AGs Probe Insurers' Participation in Industry Climate Groups

May 26, 2023



By Jason Halper
Partner and Co-Chair | Global Litigation



By Sara Bussiere
Special Counsel | Global Litigation

On May 15, 2023, twenty-three Republican state attorneys general (AGs) sent a letter to members of the Net-Zero Insurance Alliance (NZIA) expressing “serious concerns” about whether the NZIA’s requirements comply with federal and state laws, and demanding certain information. The letter observes that all recipients are members of the NZIA and some are members of the Net-Zero Asset Owners Alliance (NZAOA). Both organizations are UN-convened groups that seek to have their members transition their insurance or investment portfolios to net-zero GHG by 2050, in order to contribute to the implementation of the Paris Agreement. According to the AGs, the “push to force insurance companies and their clients to rapidly reduce their emissions has led not only to increased insurance costs, but also to high gas prices and higher costs for products and services across the board, resulting in record-breaking inflation and financial hardships for the residents of our states.”

Without identifying support for this statement, the letter quickly shifts to legal issues, taking aim at the NZIA releasing its first “Target-Setting Protocol,” which, according to the letter, requires members to “adopt one of the NZIA’s defined climate targets by this summer, and requires you to commit to three of them by next summer. These targets are anything but aspirational—they require you to take specific courses of actions over the next two decades. For example, meeting NZIA’s ‘emissions reduction target’ means choosing either an overarching insurance associated emissions reduction target of 34-60% by 2030, or targeting emissions on a sector-by-sector basis in line with a net zero pathway for that sector.” The letter also advances challenges to NZAOA’s target protocol, stating that “the NZAOA protocol requires its members

to set targets for reducing their own Scope 1, Scope 2, and Scope 3 emissions, in addition to setting targets” with respect to portfolio companies “in at least three of four defined categories.”

While the letter recognizes that NZIA’s and NZAOA’s protocols are “non-binding” and members retain unilateral authority to determine how or if to comply, the letter explains that the requirements, including that members must “comply-or-explain” their target-setting and other recommended efforts, may violate federal and state antitrust laws. One primary reason, according to the AGs, is that “an agreement among competitors not to do business with targeted individuals or businesses may be an illegal boycott, especially if the group’s competitors working together have market power.” The letter further details how the NZIA’s protocol target requirements impose potentially impermissible “conditions on the terms of . . . insurance contracts.” For example, the letter states that requiring customers to meet certain emissions reduction and engagement targets is problematic given the market power held by NZIA’s members and also “threaten[s] to dramatically increase prices, as reducing emissions and implementing climate plans typically involve decreasing output and production and/or substantially increasing costs across the value chain and, particularly, in the oil, gas, energy, and transportation sectors.” The letter describes other potential violations of state law, including state laws that “limit reasons for refusal to provide insurance.”

The letter requests that recipients produce several categories of information, including (i) communications with and among other members; (ii) communications with any American-based company concerning NZIA or NZAOA commitments; (iii) the extent to which NZIA or NZAOA is influencing the decision, if any, to reduce emissions associated with their insurance portfolios; (iv) efforts to support motor vehicle insurance clients to “go green;” and (v) whether any third-party asset managers manage investments on the members’ behalf.

Taking the Temperature: The AGs letter to NZIA/NZAOA members demonstrates that Republican-led pressure on these types of industry climate coalitions are not likely to go away any time soon. Antitrust issues continue to be the leading legal argument against such coalitions, as we discussed earlier this year. However, the AGs also cite other industry-specific state and local regulations, such as a Utah statute prohibiting “unfair” discrimination among insurance policy holders “except on the basis of classifications related to the nature and the degree of risk covered or the expenses involved,” and a Louisiana law prohibiting “unfair discrimination in favor of particular individuals or persons.” As further support for their position, the AGs referenced Zurich Insurance Group and Munich Re’s recent [withdrawal from the NZIA](#), noting that Munich Re’s official statement cited “material antitrust risks” as a reason for its decision.

We also have written extensively on similar concerns raised by Republican state attorneys general regarding coalitions involving financial institutions. For example, in March, twenty-one Republican attorneys general [wrote a letter](#) to over 50 U.S. asset managers raising similar antitrust concerns. The prior month, the chair of the House Financial Services Subcommittee [announced a probe](#) into banks’ ESG practices, adding that the committee would also monitor efforts by the Federal Reserve to set climate-related goals for financial institutions. Last year, twenty-five Republican state attorneys general [filed a lawsuit](#) against the Department of Labor (DOL) to set aside a DOL rule governing the consideration of climate change and other ESG issues by retirement plan investment managers. As we have also reported, several states have enacted legislation

restricting investment managers managing state funds from considering ESG factors in investment decisions, **blacklisting** from state business investment firms that supposedly “boycott” energy companies, or **prohibiting** asset managers from casting proxy votes to further “non-pecuniary purposes.” Arrayed in opposition to these efforts are **a variety of “pro-ESG” initiatives** under way.