



MIKE HUNTER
ATTORNEY GENERAL

June 19, 2017

Commissioner David Jones
California Department of Insurance
300 Capitol Mall, Suite 1700
Sacramento, CA 95814

Re: Climate Risk Carbon Initiative

Commissioner Jones:

We write concerning the California Department of Insurance's recent attempt at regulating the nation's energy industry by requiring insurance companies doing business in California to disclose publicly their investments in all fossil fuels. You call for these insurance companies to divest from the coal industry on the grounds that thermal coal investments are at "significant risk" of becoming "stranded assets." This is coupled with threats to publish a list of insurance companies that do not comply, as well as to undertake "examinations" of the risk coal presents to those companies that do not accede to your divestiture request. You've further asked insurance carriers to sign the equivalent of a pledge of loyalty to your commitment to refrain from future coal investments.

This initiative is misguided as a matter of policy, questionable as a matter of law, and inconsistent with the principle of comity among the United States. Your "Climate Risk Carbon Initiative" does not apply to only companies headquartered in California, but to practically all insurance carriers everywhere that do business in California, including insurance companies domiciled in our States. It also targets energy companies that have a significant presence in our States. It is our responsibility to protect the interests of those insurance companies harmed by your new initiative, as well as the many energy businesses, their employees, and their customers who are the targets of your attempt at public shaming. It is also our role to protect the public from misleading, alarmist, and fiscally irresponsible information, including deeming investments in fossil fuels as likely "stranded assets." Such hyperbolic and inflammatory language can only be aimed at hurting that sector of the economy responsible for providing American citizens with reliable energy resources.

There is little evidence behind your purported concern that companies relying on fossil fuels pose unusually high risks for insurance companies as investors, or that insurers are unaware of or ignore such risks. Investors are aware of any market risks to fossil fuel companies and those risks are priced into the market. Insurance carriers typically have conservative investment strategies weighted heavily toward bonds, which are unlikely to become "stranded assets." Bonds issued by utilities that burn a significant amount of coal have not been downgraded to junk status, nor has the value of these companies dropped precipitously. By contrast, rapid and premature divestment from bonds may

cause insurance carriers to incur significant losses—hurting the financial well-being of carriers instead of helping them. And coal companies represent such a small share of insurance carriers' overall holdings that they are likely to have little impact on financial stability.

Thus, the disclosures you require are largely immaterial to a well-functioning insurance market and the financial stability of insurance companies. Far from helping consumers, required immaterial disclosures harm the public. This is because immaterial disclosures only serve to dilute the important information required by other disclosures, confuse consumers with irrelevant considerations, and import political disagreements over environmental policy into the domain of insurance carrier investment. The effect of your efforts therefore appears to be directed at using your office to attack businesses that you do not regulate—such as energy companies—rather than to protect the public from risks in the insurance industry.

It is true that various governmental bodies have made attempts to shut down the energy industry through regulation and penalties, but your predictions about how regulation would affect the market only demonstrate the folly of insurance regulators attempting to issue investment dictates to professional investors. The primary bases for your pessimistic prognostications—The Paris Agreement and the previous administration's Clean Power Plan—have had little impact on the American energy industry. The President has announced his intention to withdraw from The Paris Agreement. Meanwhile, the Clean Power Plan—challenged by our states and many others—has been enjoined by the U.S. Supreme Court.

The concern you purport to have about the fossil fuel industry is not matched by concern over other businesses that present investment risk. For example, you do not call for divestment or disclosure of renewable energy companies that may actually present *greater* financial risk to insurance carriers. Nearly a hundred solar companies have failed or gone bankrupt in recent years (*e.g.* Solyndra, SunEdison, SolarWorld, Suniva). In the case of the bankruptcy of yet another solar company, Abengoa, insurers faced significant problems in attempting to recover \$250 million in surety bond investments, yet your office expressed no concern about these *actual* risks solar companies pose to the insurance industry. Nor are any other industries that present investment risks singled out. Only energy industries that are important to states like ours are targeted by your divestment campaign.

It is evident, then, that your concerns about the fiscal health of insurance companies doing business in your State is pretextual. Rather, your call for divestment and attempt to publicly shame those who invest in American energy appears to be driven by politics unrelated to insurance regulation, animus towards the fossil fuel industry and those that depend on it, and a desire to discriminate against those who transact in commerce that mostly takes place outside your state (*e.g.* coal mining and coal power generation). California only generates about 6% of its power from coal, but other states have a much higher reliance on coal for power generation and produce much more coal for the country. As a result, your divestment push, disclosure mandates, and accompanying threats to insurance carriers headquartered in all fifty states is likely to inflict greatest harm outside of California while providing no benefit to California consumers.

Moreover, your insistence on using your office to promote social causes unrelated to the healthy operation of the insurance industry undermines the public perception of your office and of other insurance regulators across the country. There are many other avenues through which the public, politicians, and public officials can advocate for their desired environmental policy. But the public should see state insurance commissioners as neutral regulators of insurance issues and should not

fear that the mission of the office will be compromised by unrelated partisan agendas. Nor should regulated entities be forced to worry that the insurance commissioner is prone to implement reprisals on insurers that do not sign on to his political program. This can only result in the loss of confidence in state insurance regulators to pursue their official duties faithfully. Indeed, we have had the unfortunate experience of seeing some of our fellow attorneys general harass energy companies over speech related to climate change and engage in similar attempts at public shaming, only to suffer embarrassing retreats in court.

If you continue your Climate Risk Carbon Initiative, similar legal action against you is a certainty. The Constitution's Commerce Clause prohibits illegitimate state regulations aimed at burdening or discriminating against commerce from other states. The manifest intended effect of your initiative is to, without any legitimate insurance-related basis, decrease demand for coal and fossil fuel investments (of which California has little) and thereby increase demand for other sources of energy that California uses or produces to a greater degree. The regulation also compels disclosures with no rational basis in violation of the First Amendment. The government may only compel commercial speech that promotes a legitimate government interest and is not factually misleading. Here, your actions do nothing to promote the fiscal health of the insurance industry while creating the false impression that investing in fossil fuels is a uniquely risky proposition.

We implore you to carefully consider these legal risks, the harm that you are doing to the insurance and energy industry in other states, and the lack of any real benefit to the insurance market in California. If you continue to call for divestment and require discriminatory disclosures of fossil fuel investments, we will be forced to consider the legal avenues of relief available to protect our insurance carriers, energy producers, and consumers.

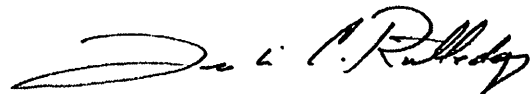
Sincerely,



MIKE HUNTER
Attorney General of Oklahoma



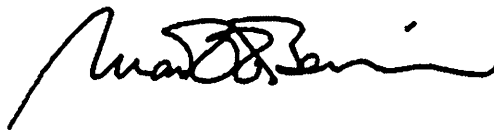
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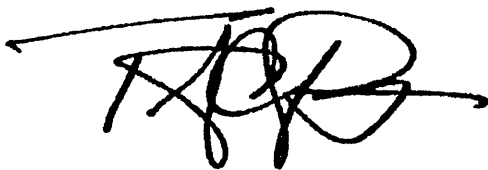
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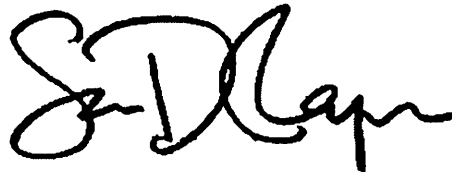
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Cc: Oklahoma Insurance Commissioner John D. Doak
National Association of Insurance Commissioners