LAW360 Insurance Authority

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More Subrogation? Experts Parse Reported Climate Suit Trend

By **Eli Flesch**

Law360 (July 16, 2026, 5:28 PM EDT) -- Subrogation suits could become an important feature of the climate change litigation landscape, a recent report from the London School of Economics says, as carriers seek to recoup disaster-related payouts and investors press insurers to take action.

But industry experts aren't confident insurers would pursue novel approaches to subrogation that would involve seeking compensation from polluting companies for disaster losses, given their existing business relationships and the difficult process that would be involved in linking an insurer's specific losses to individual companies.

Still, experts said the focus on subrogation matters in the report, an annual climate change litigation review from the LSE, reflects increased attention to the costs and legal consequences of climate disasters and infrastructure deficiencies to insurers.

Tiffanie Chan, a policy fellow at the LSE, said she sees subrogation disputes increasing.

"Quite clearly, as we're all experiencing, climate impacts are more frequent, more severe, and many infrastructures around the world may not yet be adapted well to it," she said.

The LSE researchers pointed to two recent matters in South Africa focused on climate disasters as examples of where climate subrogation litigation is heading.

The cases involve insurers of Toyota and two packaging companies as well as subrogation claims against municipal organizations for their alleged failure to adequately maintain stormwater infrastructure, increasing the damages associated with a flood in 2022.

Notably, the researchers said that it's not yet clear how explicitly climate change features in the South African cases, which began last year and are still pending.

Insurance experts have pointed to extreme rainfall and flooding as one of the most consequential effects of climate change for many countries and communities.

"Recent developments show that insurers' ordinary commercial practices are starting to generate climate litigation," the researchers said in the report. "Insurance companies do not seem to be acting as strategic litigants: rather, they are pursuing loss recovery."

The Global Trends in Climate Change Litigation report, authored by Joana Setzer and Catherine Higham, researchers at the LSE's Grantham Research Institute on Climate Change and the Environment, is meant to provide an overview of some of the most important climate change litigation trends and cases globally.

Insurance experts have said the trends it has described — including greenwashing claims centered on companies alleged to have falsely conveyed that their products are more environmentally friendly than they are — reflect massive sources of exposure.

The latest edition suggested subrogation is positioning insurers as claimants in litigation over climate change matters, a "significant development," according to the researchers.

But other experts say subrogation is less about climate change and more about insurers' ability to recover funds from parties that have been negligent and caused a loss.

Jason Reeves, a London-based attorney at Zelle LLP who advises insurers on climate change issues, told Law360 that, despite the report, he doesn't see evidence the insurance industry is actively pursuing subrogation claims in connection with climate change.

"Insurance companies have always and will continue to pursue negligence claims when someone's infrastructure to meet a required design purpose is inadequate," he said.

He added that most people that are going to pursue subrogation claims, or any type of contingent recovery, are not doing so to set new law around climate change.

"We can look at that same sort of professional negligence approach following every flood, hurricane, fire, or catastrophe event," Reeves said in an interview.

The LSE report cites recent legislation in Hawaii, California and New York as evidence that policymakers are beginning to more systematically explore subrogation at the legislative level as one possible way to approach the climate crises.

Those bills would have permitted attorneys general in three states to sue fossil fuel companies over insurance costs related to climate change, though they haven't passed.

The Hawaii bill, SB 1166, would have permitted the state's last resort insurer to litigate subrogation claims against fossil fuel companies for claims paid for natural disaster losses and extreme weather attributable to climate change. The bill was introduced in early 2025 and advanced through the House this year before stalling in committee.

For now, experts say any insurers' attempt to recover losses related to climate change would depend on linking individual fossil fuel companies' emissions to specific costs.

While the attribution science around climate change is developing — analyses are increasingly able to show how climate change worsens disasters and how much overall warming has been caused by particular companies — it's generally unable to link a particular climate event to a particular company.

That element would be critical for the success of climate-focused subrogation.

Tiffanie Chan, a policy fellow at the Grantham Research Institute, said the subrogation issues highlighted in the report are a departure from the kind of climate change suits that, in addition to seeking legal remedies, are also aimed at influencing public opinion.

She also noted the difficulties in using attribution science in a civil proceeding.

"That's quite a complex thing to turn from science to litigation," Chan said. "Science evidentiary grounds versus legal evidentiary grounds might not always be the same."

Chan also said that an insurer's decision to pursue subrogation against municipalities like those in South Africa, which may be under financial pressures because of climate change, could also divert their resources to insurance companies in other countries.

"You could see this playing out in other countries as well, where perhaps the infrastructure isn't necessarily strong to protect against escalating climate impacts," she said. "But the monetary compensation goes towards recovering losses of insurers versus the specific community that might be affected by the same disaster."

The LSE report also noted a suit between insurer Chubb and climate-change investor group As You Sow as an example of how subrogation issues have led to litigation.

As You Sow accused Chubb earlier this year of improperly denying its investors a chance to decide if the publicly traded insurer should weigh the benefits to it and its policyholders of pursuing subrogation against parties contributing to climate change.

Danielle Fugere, president of As You Sow, said that, from an investor standpoint, it's important to ask questions about how subrogation could affect insurers' business, given that subrogation could be tied to insurers' ability to provide more coverage.

But she acknowledged that the climate-change law around subrogation isn't clear.

"There's more work to be done developing the law of subrogation around climate change, and I think that may be one of the reasons why insurance companies are hesitating to bring lawsuits," Fugere told Law360 in an interview.

Giovanna Eichner, a shareholder advocate with Green Century Capital Management, which also brings environmentally focused investor proposals to insurers, said subrogation may help insurers respond to the insurance crisis.

But it still doesn't address the larger difficulties of investing, underwriting and insuring fossil fuel companies, she said.

"We want to see both — we want to see companies working to address the issue through subrogation, but also getting to the root cause because you can't solve a problem while continuing to finance it," Eichner told Law360 in an interview.

In addition to highlighting subrogation issues, the LSE report pointed to a suit accusing oil companies of contributing to higher homeowners insurance premiums, comparing it to "polluter pay" suits, which have hit legal roadblocks in recent years

Experts said that suit opened up a new consumer-oriented front in a wave of climate change litigation that is expected only to increase in the coming years.

--Editing by Nick Petruncio.