

Investigating Coverage, *Best's Review*

By Eric B. Stern, Of Counsel, and Andrew A. Lipkowitz, Attorney, of Kaufman Dolowich & Voluck, LLP, Woodbury, New York office.

Recent investigations into energy companies such as Exxon Mobil over whether they misled investors about the business risks of climate change are raising concerns about potential liability as well as questions about whether there is coverage under directors and officers policies.

The investigation by New York State Attorney General Eric Schneiderman into whether energy giant Exxon Mobil misled investors has spurred investigations by other state attorneys general. Given the seriousness of the allegations against Exxon Mobil, private shareholder lawsuits may soon follow.

Energy companies that are the subject of such investigations or potential lawsuits may seek coverage under their D&O policies. Coverage for these investigations, however, is by no means clear cut. The liability of energy companies for such claims, meanwhile, could potentially be staggering.

Given that the trend of investigating energy companies in connection with their climate change disclosures is still developing, it is possible that the insurance industry's exposure to energy companies will continue to grow.

A number of commentators and analysts have compared this trend to the series of investigations and lawsuits by state attorneys general into alleged fraud by tobacco companies related to the risk of smoking, which resulted in tobacco companies paying billions of dollars to settle claims against them.