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With Lawsuits, Climate Crusaders Come for Your 401K

by Jim Wedeking and Tanner Baird

Large, publicly traded oil companies are having their day in the sun. Spurred, in part, by global disruptions from the war in Iran, these companies are seeing record profits.[1] However, climate crusaders are demanding that stockholders abjure their good fortune because, despite all the good news, they claim that oil companies and other energy-related corporations are actually bad investments. In fact, new lawsuits are exploring creative ways to deprive those companies of capital investment. Fossil fuel divestment has long been a political strategy implemented through everything from college campus protests to Environmental, Social, and Governance movements, to the ill-fated U.S. Securities & Exchange Commission ("SEC") climate change disclosure rule.[2] With the SEC proposing to rescind its climate change disclosure rule,[3] and an injunction against a similar California law,[4] activists are testing new ways to starve fossil fuel companies of capital.[5] The environmental nonprofit ClientEarth is advancing two novel approaches in cases that are worth watching.

A Fiduciary Duty to Provide Investment Options Free of Fossil Fuels?

The first ClientEarth case, *Kvek v. Cushman & Wakefield*, centers on one employee 401k investment fund option offered by Cushman & Wakefield ("Cushman"), which is governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). ClientEarth and a prominent plaintiffs' firm, representing a former Cushman employee, allege that by offering the fund, Cushman is violating

[1] *See, e.g.*, Chelsey Dulaney, "It's an Oil Profit Bonanza for BP and Saudi Aramco, Too," *The Wall Street Journal* (Aug. 4, 2026) (earnings in S&P 500 energy sector are up 120% year-over-year for 2Q26); "Collin Eaton, Big Oil Is Reaping Rewards From the Chaos in Energy Markets" *The Wall Street Journal* (July 31, 2026) (reporting on quarterly earnings from ExxonMobil and Chevron).

[2] SEC, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," 89 Fed. Reg. 21,668 (Mar. 28, 2024). A significant criticism of the rule is that it pressured publicly traded companies into prioritizing so-called climate-related risks above all other potential risks while effectively compelling fossil fuel companies to portray themselves as high-risk investments.

[3] SEC, "Rescission of Climate-Related Disclosure Rules," 91 Fed. Reg. 33,296 (June 3, 2026).

[4] Order, *Chamber of Commerce of the United States of America v. Randolph*, Case No. 25-5327, Doc. 44.1 (9th Cir. Nov. 18, 2025) (enjoining California SB 261 pending appeal).

[5] Fossil fuel divestment is part of a larger activist strategy of crippling political opponents by depriving them of basic financial resources, such as attempting to prohibit financing and de-banking. *See, e.g.*, U.S. House of Representatives, Committee on Oversight and Government Reform, The Department of Justice's "Operation Choke Point": Illegally Choking Off Legitimate Businesses? (May 29, 2014) (describing coordinated effort pressuring banks and payment systems to terminate their relationships with firearms dealers, payday lenders, and other legal businesses the Obama Administration disfavored); U.S. House of Representatives, Committee on Financial Services, Operation Choke Point 2.0: Biden's Debanking of Digital Assets (Dec. 2025) (describing coordinated effort pressuring financial institutions to terminate their relationship with companies and individuals in the cryptocurrency field and avoid digital asset activities).

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ERISA because the fund is heavily invested in "climate-vulnerable sectors" like timberlands, coastal property loans, and "fossil fuel producers."[6] Plaintiff's theory is that employees investing in the fund will be overexposed to climate-induced financial losses through the increased occurrences of extreme weather events like wildfires and hurricanes, in addition to social demands for fossil fuel divestment.[7] ClientEarth terms this concern "climate risk" and alleges that Cushman should have better evaluated that risk before including the fund in its ERISA-governed offerings. Therefore, allowing employees the option of investing in a fund with an "unreasonable aggregation of climate-related financial risks," according to the complaint, violates ERISA's duty of prudence.[8]

But the complaint does not meaningfully allege that Cushman's *process* for selecting employee retirement fund options violates ERISA's duty of prudence. Instead, it advocates a *per se* rule that retirement investments "exposed to unreasonable levels of climate-related financial risk" are "unsuitable for inclusion as an investment option" in an ERISA plan.[9] Courts have rejected similar *per se* rules that fiduciaries violate ERISA's prudence duty by including risky investments in retirement plans.[10] Indeed, courts often recognize that riskier investments, like the small-cap fund challenged by ClientEarth, can be prudent in a broader investment strategy.[11] And the challenged fund has recently outperformed the very broad-market index ClientEarth's suit compared it to when alleging underperformance—undercutting its claim that the fund's investment in fossil fuel industries is unreasonable.[12]

The court will likely dismiss the *Kvek* case due to the plaintiff's failure to identify any financial harm from Cushman making the investment fund option available and plead necessary allegations about Cushman's process for selecting and monitoring the fund, among other reasons.[13] However, refinements in future suits and a friendly judge could push ClientEarth towards a tactical victory in making "climate-related risk" an over-arching concern in selecting employee investment funds. That could make fossil fuel companies and energy-intensive firms financial pariahs as a matter of law.

Accommodating the Church of Latter-Day Climate Change

A second ClientEarth suit takes aim at energy investments from another angle—arguing that an employer should have offered fossil fuel-free investment options to accommodate an employee's purported religious beliefs.[14] ClientEarth argues that Thermo Fisher Scientific ("Thermo Fisher") violated Title VII of the Civil Rights Act of 1964 ("Title VII") when it declined to offer a sponsored retirement fund completely divested from fossil fuels.[15] The named plaintiff claims that his Christian beliefs make investing in fossil fuels "morally abhorrent."[16] The lawsuit asks for injunctive relief that would require Thermo Fisher to provide "a fossil-fuel-free equity investment option" in its 401(k) offerings, plus attorneys' fees and declaratory relief.[17]

[6] Complaint ¶ 95, *Kvek v. Cushman & Wakefield, U.S. Inc.*, Case No. 1:26-cv-9616, Doc. 1 (N.D. Ill. Mar. 3, 2026).

[7] *Id.* ¶ 7.

[8] *Id.* ¶ 161.

[9] *Id.* ¶ 105.

[10] *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1024 (9th Cir. 2025), *cert. granted*, 223 L. Ed. 2d 553 (Jan. 16, 2026) (rejecting *per se* rule that investments in hedge funds and private equity carry greater risks than traditional investments).

[11] *Id.*

[12] Mot. to Dismiss at 15, *Kvek v. Cushman & Wakefield, U.S. Inc.*, Case No. 1:26-cv-9616, Doc. 27 (N.D. Ill. May 7, 2026).

[13] *Id.* at 2-3.

[14] *See generally* Complaint, *Hartley v. Thermo Fisher Scientific*, Case No. 1:26-cv-1612, Doc. 1 (W.D.N.Y. Aug. 4, 2026).

[15] *Id.* ¶ 44.

[16] *Id.* ¶ 21.

[17] *Id.* ¶ 65.

The *Thermo Fisher* suit is part of ClientEarth's broader attack on the "$863 billion of American retirement savings ... currently invested in oil, gas, and coal companies" and its legal theory "comes from an unlikely place" for this type of lawsuit.[18] In ClientEarth's view, the Supreme Court's decision in *Groff v. DeJoy* can force divestment from the energy sector so long as plaintiffs characterize their political beliefs as religious beliefs. *Groff* considered Title VII's requirement that employers accommodate employee religious practices except where doing so would impose an "undue hardship" on the employer.[19] ClientEarth's complaint argues there is no "undue hardship" in offering investment options divested from fossil fuels.[20]

While styled as a religious liberty claim, ClientEarth believes that suits like *Thermo Fisher* can choke off fossil fuel investments, whether a plaintiff's objection "comes from scripture, from secular ethics, or simply from a deeply held conviction about the kind of world [they] want to live in."[21] ClientEarth's strategy exploits the command of *United States v. Seeger*: in matters of religious faith, "[t]he validity of what he believes cannot be questioned."[22] Instead, courts need only satisfy themselves that the belief "is 'truly held.' This is the threshold question of sincerity which must be resolved in every case."[23] Given that climate change activism often resembles a religious fervor as much as a political movement, *Seeger*'s test of sincerity will hardly keep the gates closed. The result could help the climate camp's push to ostracize energy producers from capital markets due to "reputational risk."

Both of ClientEarth's suits are in their early stages. The *Kvek* parties fully briefed a motion to dismiss, but the court declined to rule on it and instead transferred the case to the Northern District of Illinois.[24] The transferee court has noticed the pending pleadings but has not yet ruled on the motion to dismiss.[25] ClientEarth filed the complaint in its religious liberty suit in early August and no motion to dismiss or responsive pleading has yet been filed.[26]

[18] Ben Segal, *Millions Want to Invest Their Retirement Savings in Fossil-Free Funds*, ClientEarth (Aug. 4, 2026), https://www.clientearth.us/latest/latest-news/millions-of-americans-want-to-invest-their-retirement-savings-in-fossil-free-funds-clientearth-is-suing-to-make-that-a-legal-right/.

[19] *Groff v. DeJoy*, 600 U.S. 447, 453 (2023).

[20] Complaint ¶¶ 39, 44, 55, *Hartley v. Thermo Fisher Scientific*. The complaint also seeks similar relief under the New York State Human Rights Law. *Id.* ¶ 61.

[21] Ben Segal, *The Supreme Court Ruling that Could Get Fossil Fuels Out of Your Retirement Fund*, ClientEarth (Aug. 4, 2026), https://www.clientearth.us/latest/latest-news/the-supreme-court-ruling-that-could-get-fossil-fuels-out-of-your-retirement-fund/.

[22] 380 U.S. 163, 184 (1965).

[23] *Id.* at 185.

[24] Order, *Kvek v. Cushman & Wakefield, U.S. Inc.*, Case No. 1:26-cv-9616, Doc. 54 (N.D. Ill. July 23, 2026).

[25] Order, *Kvek v. Cushman & Wakefield, U.S. Inc.*, Case No. 1:26-cv-9616, Doc. 59 (N.D. Ill. Aug. 25, 2026).

[26] *Hartley v. Thermo Fisher Scientific Inc.*, Case No. 1:26-cv-1612 (W.D.N.Y., filed Aug. 4, 2026).