

## 2017 WINNER'S SUBMISSION

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Share your views on the present and/or future for the insurance industry from a perspective that affects your position.



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### BACKGROUND & CONTRIBUTION

My career began as a Financial Lines Graduate at QBE in 2013, which included working in the Financial Lines claims team. Despite obtaining a role as a Financial Lines underwriter, my time in claims led to a strong interest in claims management. Involvement in policy application and assisting insureds in the defence of claims, with its requirement for both analytical and commercial sensibility, is something I highly value and in 2015 I obtained a role as a Financial Lines claims examiner.

I believe my contribution to the industry has been positive. I always endeavour to maintain a high level of professionalism to improve our industry's standing with clients and the community. I have completed my Diploma in General Insurance and am currently completing my Diploma in Law. I actively participate in industry events and I look forward to making a significant contribution to the industry, particularly Financial Lines claims, in the many years to come.

### INCREASING EXPOSURE TO CLIMATE CHANGE CLAIMS

In 2014 environmental groups sent letters to major energy companies and D&O insurers warning that directors would be held liable for their conduct in lobbying against climate change action. At the time of the letters, commentators largely dismissed them as publicity stunts, considering such actions against directors were unlikely.

In 2016 investors filed a securities action against ExxonMobil claiming it knew that global temperature increases were imminent and this would limit its access to carbon credits to extract oil reserves. Despite this knowledge it is alleged ExxonMobil continued to post positive projections on its reserves. ExxonMobil subsequently wrote down the value of its reserves and suffered a 13% share price drop.

The ExxonMobil claim demonstrates that climate change is now having a material financial impact. While directors are unlikely to be held liable for social or macroeconomic impacts of climate change, directors who are not aware of changes in their own regulatory environment are potentially exposed to actions by investors. Government market intervention to respond to climate change will continue, and failures to consider this risk could expose directors.

While the risk is particularly pronounced for energy and industrial companies, others including financial institutions with assets exposed to weather events are not immune. As demonstrated in the QBE class action,<sup>1</sup> insurers are exposed to shareholder actions where they fail to maintain adequate future claims reserves, or base profit guidance on growing their participation in schemes or product classes exposed to unpredictable weather events and the inevitable increased claims activity.

### IMPLICATIONS FOR INSURANCE PROFESSIONALS

Securities claims alleging failures to quantify and report on the impact of climate change are likely to increase as the effects of climate change materialise. Directors are exposed to claims for breaches of their duties should it be demonstrated they were aware of the impact of climate change on company assets and failed to act. In the absence of explicit exclusions it is likely D&O and securities policies will respond to claims. Underwriters should ensure they are accurately pricing the exposure, particularly for entities in energy or industrial sectors.

Insurance professionals should follow closely the developments and outcome of the ExxonMobil class action. The claim provides an indication of likely arguments to be led by plaintiffs, and the scope of knowledge required to establish directors were aware of climate change risks.

### SUMMARY

The very filing of the ExxonMobil claim serves as a warning that failures to accurately report or mitigate the financial impact of climate change on company assets may expose the company and directors to litigation. We now move beyond unquantifiable threats from environmental groups, towards litigation seeking substantial damages for financial losses suffered from failures to consider the impact of climate change.

### Mitchell Spurr

<sup>1</sup> Money Max Int Pty Ltd (Trustee) v QBE Insurance Group Limited