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National Association of Manufacturers Hires Special Counsel to Handle Growing Climate Change Lawsuits

As climate change lawsuits grow more prevalent, Linda Kelly, senior vice president and general counsel of the National Association of Manufacturers, has hired Phil Goldberg, managing partner of the Washington, D.C., office of Shook, Hardy & Bacon, as special counsel to handle the issue.

By Sue Reisinger

As climate change lawsuits grow more prevalent, Linda Kelly, senior vice president and general counsel of the National Association of Manufacturers, has hired Phil Goldberg, managing partner of the Washington, D.C., office of Shook, Hardy & Bacon, as special counsel to handle the issue.

The association said Goldberg will serve as a senior outside legal adviser and spokesman for the Manufacturers' Accountability Project, a 2017 initiative that opposes climate change lawsuits by states, municipalities and others against businesses such as utilities and gas and oil companies.

Kelly heads the in-house legal arm, the Manufacturers' Center for Legal Action, which is leading the accountability project.



Left to right: Linda Kelly, senior vice president and general counsel of the National Association of Manufacturers and Phil Goldberg, managing partner of the Washington D.C., office of Shook, Hardy & Bacon.

The association said the project was created to “expose the concerted, coordinated political campaign being waged in the courts against America’s manufacturers ... through a series of baseless public

nuisance suits and other legal tactics.”

In a statement Kelly said, “Last year, three public nuisance cases brought by the cities of San Francisco, Oakland and New York were all thrown out by federal

judges, and the Manufacturers' Accountability Project will work tirelessly to build on that record in 2019."

She added that Goldberg "is one of the brightest legal minds in this space and brings impeccable credentials to the table."

Goldberg co-chairs his law firm's public policy group. He also authored amici briefs on climate change cases submitted to the U.S. Supreme Court and the Supreme Court of Rhode Island. The Rhode Island and New Jersey Supreme Courts cited Goldberg's articles in denying overly expansive public nuisance theories.

Goldberg said in a statement, "The NAM and its Manufacturers' Accountability Project are the tip of the spear in the fight against the wave of unfounded public nuisance lawsuits targeting America's manufacturers. The stakes could not be higher for manufacturers as well as the integrity of our legal system."

The project grew considerably in 2018 as lawsuits targeting energy producers were filed by 14 municipalities, one state and a group of Pacific coast fishermen. Also, state attorneys general in New York and Massachusetts continue to pursue investigations and litigation against these manufacturers.

The project's website states, "As these suits drag on into 2019, key decisions over the next year could dictate the fate of this litigation."

For example, San Francisco; Oakland, California; and New York City are appealing the rulings against them. The California cases are in the U.S. Ninth Circuit Court of Appeals, and the New York case is in the Second Circuit. NAM said briefings are underway and oral arguments will be heard "in the coming months."

A threshold question for many of the remaining suits is whether they should be heard in state

or federal court, the association said.

Judges in lawsuits filed by the city of Baltimore and municipalities in Colorado and Rhode Island are set to decide the venue issue soon. The association is pushing for federal court.

So far the plaintiffs have not won a case. But their lawsuits may have received a morale boost with the recent bankruptcy filing by the California utility Pacific Gas and Electric Co.

PG&E, whose general counsel, John Simon, recently took on the additional role of interim CEO, faces some \$30 billion in potential damages for its alleged role in last year's California wildfires. The fires killed more than 80 people and destroyed over 10,000 homes.

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