

Trillion Dollar Transformation: Pension Fund Fiduciary Duties & Climate Change

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About CIEL

The Center for International Environmental Law uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society.

Duty of Prudence

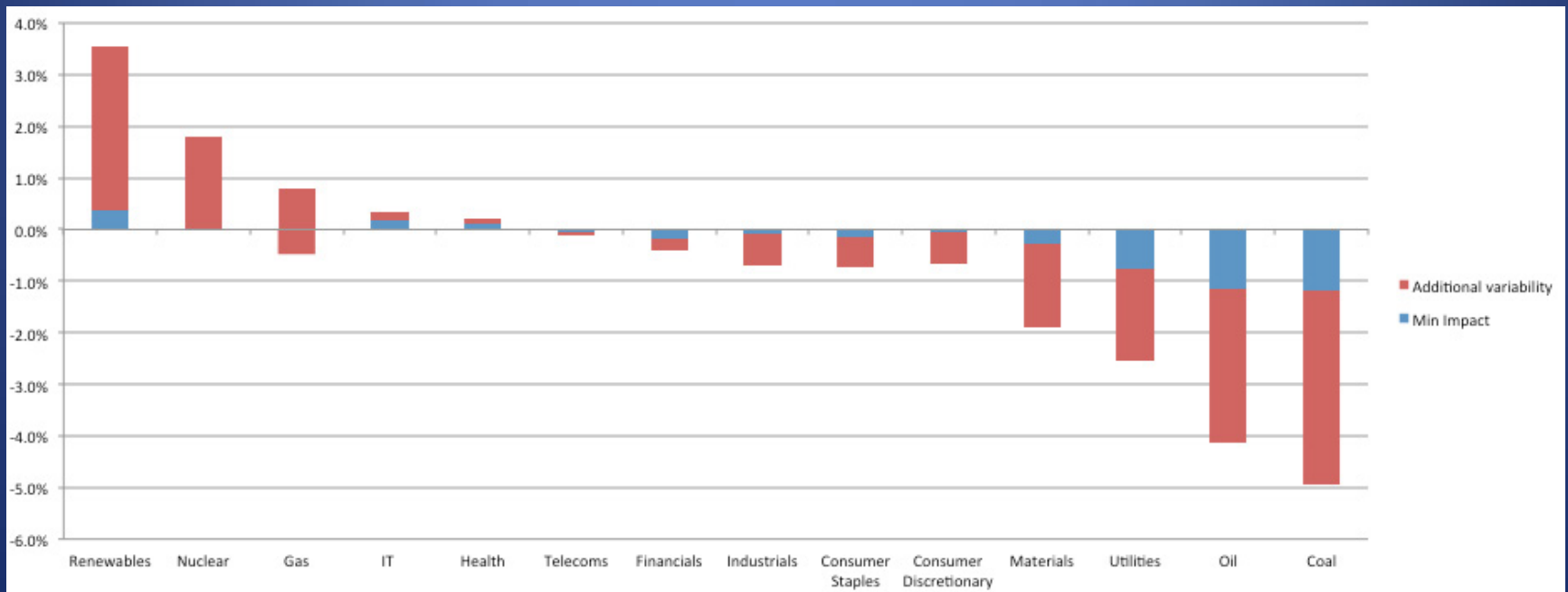
Pension fund fiduciaries must act “with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.”¹

¹Employee Retirement Income Security Act § 404(a)(1)(B)

Climate Change is a Material Risk

Climate change will have an impact on investment performance, although assets in different classes and sectors will be affected differently

Median additional annual returns by sector across scenarios (over the next 35 years)



Climate Change Triggers Trustee Duties

- Duty of Inquiry
- Duty to Monitor
- Duty to Diversify
- Duty of Impartiality
- Duty of Loyalty
- Duty to Act in Accordance With Plan Documents

Climate Change Triggers Trustee Duties

- **Duty of Inquiry**

- Trustees have an obligation to inquire into the relevant facts and circumstances surrounding investments they make

- Duty to Monitor

- Duty to Diversify

- Duty of Impartiality

- Duty of Loyalty

- Duty to Act in Accordance With Plan Documents

Climate Change Triggers Trustee Duties

- Duty of Inquiry
- **Duty to Monitor**
 - Trustees must periodically review positions to check on the prudence of maintaining their investments
- Duty to Diversify
- Duty of Impartiality
- Duty of Loyalty
- Duty to Act in Accordance With Plan Documents

Climate Change Triggers Trustee Duties

- Duty of Inquiry
- Duty to Monitor
- **Duty to Diversify**
 - Trustees must allocate their assets so as to minimize risk while maximizing returns
- Duty of Impartiality
- Duty of Loyalty
- Duty to Act in Accordance With Plan Documents

Climate Change Triggers Trustee Duties

- Duty of Inquiry
- Duty to Monitor
- Duty to Diversify
- **Duty of Impartiality**
 - Trustees cannot discriminate between the interests of different beneficiaries, including future beneficiaries
- Duty of Loyalty
- Duty to Act in Accordance With Plan Documents

Climate Change Triggers Trustee Duties

- Duty of Inquiry
- Duty to Monitor
- Duty to Diversify
- Duty of Impartiality
- **Duty of Loyalty**
 - Trustees must act in the sole interests of fund beneficiaries
- Duty to Act in Accordance With Plan Documents

Climate Change Triggers Trustee Duties

- Duty of Inquiry
- Duty to Monitor
- Duty to Diversify
- Duty of Impartiality
- Duty of Loyalty
- **Duty to Act in Accordance With Plan Documents**

Modification of Investment Principles

- This can be a first step towards addressing climate risks
- Important for ensuring all trustees, employees, and outside actors are on the same page
- Cannot be just a cosmetic adjustment

Avoidance

- Avoiding investments in the most climate-vulnerable sectors is the most direct approach to reducing long-term climate risk.
- May be preferable for smaller funds without extensive time or personnel
- No legal obstacle to negative screening

Engagement

- Funds should actively participate as shareholders in the companies they own
- Funds can request information and vote for board members or shareholder resolutions
- Engagement can help bridge the gap between a low-carbon future and current business practices

Proactive Investment in Clean Energy Opportunities

- Some of the best scenarios for clean energy are the worst scenarios for fossil fuels and other climate-vulnerable assets
- Proactively investing in clean energy assets can act as a valuable hedge against climate risk

Potential Liability

- Climate litigation is real, ongoing, and ever more successful
- Trustees are on notice of climate risks
- Litigation:
 - SEC, New York, and Massachusetts Investigations
 - *Conservation Law Foundation v. ExxonMobil*
 - *Juliana v. United States*
 - *Lliuya v. RWE*
 - *Urgenda Foundation v. The State of the Netherlands*
 - Petition from Commission on Human Rights of the Philippines

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