

Climate Change Disputes

Since the adoption of the Paris Agreement, and as the Intergovernmental Panel on Climate Change (IPCC) reports continue to highlight the link between human activity and climate change, there has been a sharp increase globally in court cases concerning climate change. Companies are increasingly being targeted under a broader range of claims, such as claims aimed at holding them accountable for their contributions to or inaction on climate change, their failure to properly consider climate change risk in their long-term business planning, or for climate-related “greenwashing” — making exaggerated, misleading or unsupported statements about climate action or targets.

The evolving nature of climate change litigation

Climate change litigation has largely been within the realm of environmental law, where issues or consequences of global warming are taken into account. Strategic climate change cases are often brought by NGOs and climate campaigners that aim to bring about a broad societal shift. For example, claims have been brought against governments alleging climate change-related harm and breaches of duties owed to plaintiffs under environmental statutes, or based on torts such as public nuisance.

However, there has been a shift from actions grounded in environmental law to other areas. Increasingly, claimants are seeking to portray climate change as a question of human rights law, arguing that government or corporate inaction on climate change is violating the rights of individuals — including of future generations — living in areas vulnerable to the effects of climate change. Some climate change lawsuits are targeting governments and corporates alike over alleged failures to make good on climate commitments, with courts in some jurisdictions showing a willingness to hold companies to account if their plans to reduce greenhouse gas emissions are not considered sufficiently ambitious, by imposing penalties, ordering companies to pay damages or imposing more specific obligations. Still, other claims are brought against companies for their failure to disclose financial risks linked to climate change, based on corporate or consumer grounds.

Climate credentials, corporate disclosures, and claims

Beyond the courts, growing concern over greenwashing has pressured governments and regulators to define and enforce clear standards. As voluntary reporting frameworks — such as those published by the Task Force on Climate-related Financial Disclosures — are

becoming the basis for mandatory corporate disclosure requirements, and as the climate-consciousness of consumers, shareholders, investors and the broader community is rising, increased scrutiny of companies’ climate credentials and disclosures has led to a rise in climate-related greenwashing claims.

Developments in the US, the EU and UK are building momentum towards disclosure standards. For example, the UK is the first major economy to make climate disclosures by certain companies mandatory on a “comply or explain” basis, to give investors better and more comparable information.

Mitigating the risks

Globally, climate change litigation is a developing area of jurisprudence. Litigation that is aligned with climate goals is often seeing success and there have been a number of important wins for claimants.

Companies should be prepared for increased scrutiny and the need to demonstrate the accuracy of disclosures and statements, as well as the viability of climate commitments made, to regulators and a wide range of stakeholders. Key actions include the following:

- Allocating appropriate resources and ensuring there is a robust governance framework in place across the areas and geographies required, with visibility and control over claims and commitments made
- Ensuring there is clear baseline data against which to monitor progress on climate commitments and that there are systems in place to measure the necessary data
- Undertaking regular documented, evidence-based reviews of actions, disclosures and statements on climate change issues and targets
- Keeping up to date with evolving regulatory obligations in this area



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