CURRENT TRENDS IN CLIMATE CHANGE LITIGATION: A SNAPSHOT OF RISK AND INSURANCE CONSIDERATIONS

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UK Litigation and Dispute Resolution Alert

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In recent years, climate change litigation has begun to impact an increasingly diverse range of businesses and their directors and officers. This trend has been highlighted in The Grantham Research Institute's 2025 Report on Global Trends in Climate Change Litigation, which underscores the growing legal challenges. Businesses from all sectors need to anticipate potential liabilities and insurance considerations to mitigate risks effectively.

The Grantham 2025 Report identifies the expanding categories of climate change litigation, including:

- "Polluter pays litigation" which seek to hold companies accountable for climate related harm allegedly caused by their gas emissions
- "Corporate framework cases" which seek to disincentivise companies from continuing with high-emitting activities by requiring changes in corporate governance for example
- "Transition risk litigation" which concern the alleged (mis)management of transition risk by directors, officers and others tasked with ensuring the success of the business
- "Climate-washing" or "greenwashing" cases, where environmental claims by companies are alleged to be untrue or misleading. These cases remain the most widely used strategy for trying to hold companies accountable, although the rate of filings reduced overall in 2024.

Climate change litigation targeting both government entities and private organizations has been on the rise globally. As of June 2025, 33 lawsuits were pending before French courts, positioning France among the top ten jurisdictions worldwide, including the United Kingdom, for climate litigation cases.[1]

DIVERSIFICATION OF DEFENDANTS IN CLIMATE LITIGATION

The Grantham 2025 Report highlights the constantly evolving landscape of climate change litigation. While the majority of cases can be considered strategic, aimed at changing government strategy, approximately 20% of climate change cases filed in 2024 targeted companies or their directors and officers. Potential targets are not confined to traditional sectors, like energy and fossil fuels, but now include companies in the animal agriculture, food, retail, and professional services sectors. Moreover, claims are not just based on tortious liability and human rights violations but also rely on new statutory mechanisms.

Professional services firms may face litigation for allegedly facilitating emissions and for the alleged failure to manage or reduce emissions resulting from the activities they advise on. In the Netherlands, Greenpeace's legal

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team issued a legal warning against law firm Loyens & Loeff over its role in facilitating the restructuring of Brazilian meat processing giant JBS, which is facing growing criticism for its contribution to greenhouse gas emissions.

Financial services firms are also in the firing line. ClientEarth filed a complaint with the French finance regulator seeking an investigation into allegedly misleading claims made by asset manager BlackRock in the marketing of sustainability linked financial products.[2] It called on BlackRock to allocate investments away from fossil fuels and for the company to stop advertising such investment funds as 'sustainable'. Supervisory institutions seem to be exerting more pressure on the financial services sector, with the European Banking Authority's 2025 ESG Risk Management Guidelines requiring banks to identify and mitigate climate-related risks, including litigation risks.

Corporate framework cases are generally on the rise, aiming to hold companies accountable for their contribution to climate change; various types of claims are being brought–some under tort[3] and human rights laws.[4] In France, due diligence claims under the French Duty of Vigilance Law[5] require companies (with over 5,000 employees in France or 10,000 worldwide) to establish, publish and enforce a vigilance plan which identifies ESG risks and measures to prevent serious violations of human rights, health and safety and the environment resulting from the activities of the company, its subsidiaries and established subcontractors and suppliers. Landmark decisions, such as the Paris Court of Appeal's ruling in *SUD PTT v. La Poste SA*,[6] have set benchmarks for compliance with the duty of vigilance, pending further developments at the EU level. Such statutory pathways could potentially cause litigation against professional service providers for inadequate due diligence procedures.

INSURANCE CONSIDERATIONS

For businesses with a global presence, navigating the current legal and political trends relating to climate change measures. Globally, insurers, who are directly affected by climate change, are placing greater emphasis on addressing these challenges. They also face growing regulatory pressure to integrate environmental considerations into their operations.[7] These obligations are often passed on to policyholders, encouraging the implementation of measures to prevent environmental harm, either through incentives such as premium adjustments, or through policy exclusions where insufficient measures have been taken by the insured to mitigate its environmental impact.

Thus, businesses will benefit from reviewing their insurance cover on a global scale, to determine what protection they have against potential losses and liabilities arising from climate change-related litigation in its various forms.

Professional liability and D&O insurance may offer some protection for the legal costs incurred by businesses, and individual directors and officers, in responding to investigations or proceedings but policyholders should carefully examine their coverage in light of these expanding risks. Some insurers may seek to limit their exposure by imposing climate or environmental related policy exclusions. In the past, such exclusions may not have seemed relevant, particularly for those in the professional or financial services sector, but that may no longer be the case.

Most businesses will have Public Liability or Commercial Liability insurance which may be relevant in cases where it is alleged that the business is liable to third parties for personal injury or property damage. Policyholders will need to remain wary of extreme weather or climate-related exclusions being imposed.

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Public Liability policies may not always provide coverage for environmental damage resulting from the insured's activities or originating from their operating sites. However, coverage exists for losses and liabilities arising from sudden, unforeseen, and unintentional environmental damage (e.g. environmental damage resulting from an unexpected mechanical failure, explosion, fire, or operational error). Additionally, businesses can obtain Environmental Liability Insurance, which covers the financial consequences of any personal injury, property damage, and financial losses suffered by third parties due to accidental or gradual pollution occurring on the company's premises, as well as the insured's legal costs in defending third party claims.

If you have queries in connection with climate change litigation and related insurance considerations, please do contact the authors listed above or any of the lawyers in our Insurance Recovery and Counselling team. Our global team assists policyholders in managing and mitigating legal risk by maximizing insurance recoveries and optimising existing insurance arrangements. Our team is familiar with the full spectrum of issues policyholders face, including potential losses and liabilities arising from climate change litigation.

FOOTNOTES

[1] UN Environment programme and Columbia Law School Climate School Sabin Center for Climate Change Law report on Climate change in the courtroom: Trends, impacts and emerging lessons, June 2025, p. 15-16, https://wedocs.unep.org/rest/api/core/bitstreams/ae56f4d1-de87-4500-8da1-50362bd97ccc/content

[2] ClientEarth complaint targets BlackRock over misleading sustainability claims | ClientEarth

[3] *Deutsche Umwelthilfe (DUH) v. Bayerische Motoren Werke AG (BMW)* Deutsche Umwelthilfe (DUH) v. Bayerische Motoren Werke AG (BMW) - The Climate Litigation Database

[4] Greenpeace Italy et. Al. v. ENI S.p.A., the Italian Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A. - The Climate Litigation Database

[5] Law No. 2017-399 of March 27, 2017, on the Duty of Vigilance of parent companies and ordering companies (*Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*), codified in the French Commercial Code, Articles L.225-102-4 et seq.

[6] *SUD PTT v. La Poste SA*, Paris Court of Appeal, Division 5 – Chamber 12, June 17, 2025, Case No. 24/05193; Paris first instance civil court, 5 December 2023, case No. 21/15827.

[7] Report published by the *Autorité de contrôle prudentiel et de résolution* (the French regulatory authority for the insurance sector) on February 17, 2022, regarding the governance of climate change-related risks in the insurance sector, https://acpr.banque-france.fr/system/files/import/acpr/medias/documents/20220217_rapport_acpr_gouvernance_risque_climatique_assurance_vf.pdf

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