CURRENT TRENDS IN CLIMATE LITIGATION: WHAT DO CORPORATES NEED TO KNOW?

ICJ DECISION

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On 23 July 2025, the International Court of Justice ("ICJ") delivered an advisory opinion on countries' climate change obligations. The ICJ, which is the United Nations' principal judicial organ, found that countries are obligated under both treaties and customary international law to ensure protection of the climate system from greenhouse gas ("GHG") emissions. More significantly, the opinion potentially opens the door to claims against countries that fail to act in accordance with these obligations, which include regulating companies within their jurisdictions.

For fossil fuel companies in particular, the ICJ's advisory opinion opens the door to potential new areas of climate change legal risk. This is because the ICJ recognized that countries' climate change obligations encompass activities relating to the production and licensing of, and subsidies for, fossil fuels. According to the ICJ, a nation's failure to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act attributable to that country.

In time, this may result in increased climate change regulation focused on the fossil fuel and other carbon intensive sectors, and other avenues of litigation by which private individuals, NGOs, climate activist organisations and governments can scrutinize corporate behaviour in such sectors with respect to climate change. As the full consequences of the opinion, which is technically non-binding on countries, remain uncertain, we summarise the state of play in climate litigation, comparing key cases and their potential effects upon companies in the US, EU and the UK.

US Update

Although the US remains the country with the highest number of climate-related cases filed year on year, since the start of 2025, there has been a noticeable shift in the political, legal and regulatory context surrounding these cases. In stark contrast to the ICJ's approach with respect to fossil fuels and climate change, US Federal government policy now actively promotes expansion of the fossil fuel industry at the expense of renewable energy. Furthermore, the Federal government is filing briefs in support of fossil fuel company defendants in litigation brought by local governments seeking damages from fossil fuel companies in connection with climate change. These Federal government developments come in the context of a strong anti-ESG movement in certain states. In 2021, Texas introduced a law preventing state institutions from investing in companies which "boycott" the fossil fuel industry on ESG grounds. These companies include major global banks and asset managers.

Nevertheless, the situation remains nuanced with certain states, such as New York and Vermont, seeking to enact "climate superfund" laws aimed at recovering compensation from fossil fuel companies. Other states, such as California, are pushing forward with enhanced climate change and sustainability-related disclosure requirements. While these laws remain subject to legal challenge, including from the Federal government, it is clear that the situation in the US presents a complex picture.

EU Update

From an EU perspective, the climate litigation landscape is broadly continuing on its previous trajectory. At present, fossil fuel companies have generally come out victorious in claims brought against them. However, European courts have delivered a number of carefully drafted judgments, which potentially leave the door open for further litigation in future, no doubt bolstered by the ICJ opinion.

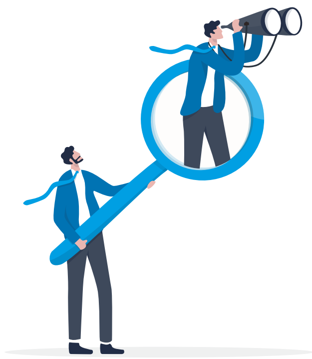
In November 2024, the Court of Appeal of the Hague overturned the landmark judgment in Milieudefensie et al. v Royal Dutch Shell Plc. While Shell succeeded in knocking out an obligation to reduce its carbon dioxide emissions by 45% below 2019 levels by 2030 (or any other specific reduction target), the court nevertheless confirmed that Dutch law imposes a "duty of care" on Shell to "protect human rights against dangerous climate change".

Another key judgment from Germany in May 2025 involved claims by a Peruvian farmer against Germany's largest electricity producer, RWE, (Luciano Lliuya v RWE). Lliuya sought a contribution from RWE to fund the costs of protecting his property from flood damage caused by rising temperatures. The compensation sought from RWE was 0.47% of the total costs, calculated as RWE's estimated contribution to global GHG emissions. Again, while the case failed on the merits as the specific flood risk was not sufficiently imminent, the court confirmed that major GHG emitters can, in principle, be held liable for the impacts of their emissions under German law. Amongst other things, the case was a key step in the development of attribution science, which makes a causal connection between major emitters and climate-related harm, and the ability to claim damages for transboundary harm.

UK Update

From a UK perspective, the Supreme Court has similarly acknowledged the potential for UK based parent companies to be liable for environmental harm caused by their foreign subsidiaries elsewhere in the world, under developing principles of parent company liability (Vedanta Resources Plc v Lungowe and Okpabi v Shell). Judgment is awaited in the landmark trial of Municipio De Mariana v BHP Billiton, relating to claims for damages of over £36bn arising from the 2015 collapse of Brazil's Fundao Dam. While, pending the Municipio De Mariana decision, UK-based litigation has yet to result in a finding of liability for parent companies (as they have all been considered at a preliminary stage), these cases show a continuing trend of the courts being open to hearing such claims and, potentially, imposing such liability.

Finally, in contrast to the May 2025 US Supreme Court ruling in Seven County Infrastructure Coalition v Eagle County, Colorado where the Court clarified that the US National Environmental Policy Act requires US environmental impact assessments to focus on the environmental effects of the project at issue, in June 2024 the UK Supreme Court expanded the scope of UK environmental impact assessments (Finch v Surrey County Council [2024] UKSC 20). The claimants had challenged a local council's decision to permit the expansion of oil production from a well in Surrey. The Court held that the council was required to consider downstream GHG emissions (i.e. Scope 3 emissions) that would occur when oil combustion inevitably takes place elsewhere, with the result that its decision to permit the development was unlawful. The approach in Finch has been applied subsequently in Friends of the Earth v Secretary of State for Levelling Up, Housing, and Communities [2024] EWHC 2349 (Admin) where the claimants were successful in challenging the Secretary of State's decision to grant planning permission to build a coal mine in Cumbria. In light of these judgments, project developers should take an increasingly broad approach to assessing potential downstream emissions.



Conclusion

Looking to the future, in the near term, the US on the one hand and the EU and UK on the other, appear to be on increasingly divergent paths when looking at where fossil fuel companies may be subject to litigation risk in connection with climate change. As discussed in this article, the US Federal government is actively promoting fossil fuel developments and pre-emptively bringing claims against states that it believes intend to pursue litigation against fossil fuel companies. However, European regulation, which often also applies to certain US companies, may complicate the landscape further in terms of scope for climate litigants to seek to hold companies across a broad range of industries to account for perceived climate-related failings.

As a result, and in light of the international reach of the ICJ opinion, assessing climate litigation and related risk requires bespoke consideration: it may be more or less relevant depending on sector, jurisdiction, regulation, company profile and strategic litigation trends.