

Trends and developments in global climate litigation: A guide for insurers

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Over the past year, climate related litigation has continued to evolve, with several landmark decisions shaping the global legal landscape. While the overall number of new strategic climate cases filed globally in 2024 declined slightly compared to previous years, this trend does not suggest a reduction in risk for insurers. Instead, it reflects a maturing litigation landscape, where claimants are increasingly pursuing high-impact, precedent-setting cases with more sophisticated legal arguments. For insurers, this presents growing exposure both as liability underwriters and directly through their own disclosures, marketing and investment activities.

This article explores the key trends currently shaping global climate litigation, outlines their implications for insurers, and identifies forward-looking themes that may inform the next wave of legal and regulatory challenges.

Key trends and developments

- **ICJ Advisory Opinion on the Obligations of States in respect of Climate Change**

On 23 July 2025, the International Court of Justice (ICJ) issued a landmark [advisory opinion](#) affirming that States have binding legal obligations under international law to address climate change. Key points include:

- States have climate obligations arising from treaties, customary international law and international human rights law.
- All States have a legal interest in compliance. This means that any State, regardless of whether it has suffered direct harm, may initiate proceedings against another State.
- Governments are responsible for the climate impacts caused by companies within their territories.
- States breaching obligations can face the full range of legal consequences under international law.
- While not legally binding, the Opinion is expected to influence domestic courts, shape policy decisions, and increase pressure on States to regulate carbon-intensive industries. This may translate into more climate-related regulatory enforcement and litigation against insured corporates.

• **Corporate accountability**

Climate litigation is increasingly targeting corporate actors in novel and expansive ways. For insurers, this trend signals growing exposure as liability underwriters for corporates under various liability policies including General Liability, Third Party Liability, Directors and Officers (D&O) and Environmental Liability policies, amongst others.

Key developments include:

- In *Milieudefensie et al. v Royal Dutch Shell*, the Dutch Court of Appeal found Shell owed a private duty of care under the Dutch Civil Code to reduce CO₂ emissions. Shell's business

practices were found to contribute significantly to climate change and pose risks to human rights. While Shell was granted flexibility in how it meets its duty, the case is now under appeal, with Milieudefensie seeking reinstatement of the High Court's order for specific emissions reductions.

- In May 2025, a German court handed down the much-awaited judgment in the *Luciano Lliuya v. RWE* case. The German court ruled that RWE could, in principle, be held liable under a German civil law protecting people from unreasonable interference to their property, for its share of global emissions (~0.38%), even for damage occurring abroad. Although the claim failed on factual grounds, the court accepted attribution science and rejected the defence that RWE was “just one of many” emitters. It remains to be seen whether the template set down in this case will be successfully followed in the future, but certainly the case is an important milestone in global climate litigation.
- Insurers should monitor how causes of action under domestic legal frameworks might be used to support similar claims. For example, in *Hugues Falys v TotalEnergies* filed in 2024, TotalEnergies are being sued on the basis of Belgian extra-contractual civil liability.

If RWE-type litigation succeeds on the facts, it could result in large-scale liability for corporates, and high value claims lodged with insurers. Insurers should be aware of this risk, and may wish to consider revisiting exclusions, liability limits and coverage triggers to mitigate significant exposure.

• **Project approval litigations**

Environmental impact assessments (EIAs) are under increasing legal scrutiny—especially where they fail to account for Scope 3 emissions, downstream emissions from the use of fossil fuels which include emissions from end-use of products. In 2024 alone, 97 strategic cases challenged EIAs, with a focus on fossil fuel project approvals, although EIAs for other projects, such as ports and infrastructure projects, have also been challenged.¹

Two landmark rulings highlight the global divergence:

- In *Finch v. Surrey County Council*, the UK Supreme Court held that the Council's approval of an oil extraction project was unlawful because its EIA failed to assess Scope 3 emissions. These emissions were deemed foreseeable and significant, setting a precedent that could reshape planning law and increase litigation risk for developers—and their insurers.
- In contrast, in *Seven County Infrastructure Coalition v. Eagle County* the US Supreme Court held that in EIAs, agencies are not required to assess Scope 3 emissions, especially those outside their regulatory authority. For example, the Surface Transportation Board (STB) was not obliged to assess emissions from oil refining in Louisiana as it had no jurisdiction over those activities. This ruling is likely to limit litigation risk for projects and may accelerate approvals in the US.

Further pressure is mounting from international courts:

- The European Free Trade Association (EFTA) Court, in a binding [advisory opinion](#) for EEA States that are not part of the EU (Norway, Iceland, Liechtenstein), confirmed that Scope 3 emissions are "effects" under EU law and must be assessed in EIAs. This also provides an authoritative, albeit nonbinding, juridical clarification on this point of law for the European Union.
- The [Joint Declaration](#) of Judges Bhandari and Cleveland in the context of the ICJ Advisory Opinion on the Obligations of States in respect of Climate Change, stated that EIAs for fossil fuel extraction must consider Scope 3 emissions.

These developments have direct implications for insurers providing cover for fossil fuel developers, infrastructure projects, or public authorities involved in project approvals. Deficient EIAs or approvals that breach environmental laws or treaties—such as the Paris Agreement—can trigger litigation, reputational fallout, and insurance claims under general and project-related policies.

Insurers should factor Scope 3-related litigation risk into underwriting and risk assessments—especially in jurisdictions like the UK and EEA, where legal obligations are expanding.

- **Greenwashing**

Greenwashing remains another central theme in climate litigation. These claims, targeting misleading sustainability messaging, are the most commonly brought strategic case against corporates, and have a relatively high success rate.² Alongside litigation, regulators across jurisdictions are ramping up enforcement, making greenwashing a dual threat.

Claims and regulatory actions span sectors from fossil fuels to fashion, illustrating the breadth of exposure. For example:

- **Fossil fuels:** *Blumm v. NorthWest Natural Gas Co.* a class action alleging deceptive carbon offset marketing.
- **Financial services:** *ClientEarth v. BlackRock* in which it is alleged that BlackRock misleadingly labelled 18 of its investment funds as sustainable whilst they held significant investments in fossil fuel companies. *Australian Securities and Investments Commission (ASIC) v. Vanguard Investments Australia* in which ASIC obtained an AU\$20 million penalty against Vanguard for misleading ESG statement.
- **Aviation:** The UK's Advertising Standards Authority (ASA) regulatory action against *Wizz Air* and *Deutsche Umwelthilfe (DUH) v. Deutsche Lufthansa AG*, both targeting misleading sustainability claims.
- **Retail:** The Italian Competition Authority fined *Shein's European operator* €1 million for misleading environmental claims in clothing advertisements.
- A major development in the UK is that from April 2025, under the Digital Markets, Competition and Consumers Act (DMCCA), UK regulators can impose penalties of up to 10% of global turnover for unfair commercial practices including greenwashing—raising the

stakes significantly.

The high success of these claims and the related financial penalties against insured corporates are a key line of exposure for insurers. Claims and enforcement actions could trigger insurance claims under Directors & Officers and General Liability insurance policies.

Insurers themselves are also under scrutiny. They must consider their own investment and sustainability strategies and ensure marketing and ESG disclosures are accurate and substantiated. Missteps could expose them to the same regulatory and litigation risks faced by their insureds.

- **Insurance coverage disputes**

Climate-related liability coverage disputes have been seen, albeit rarely. Recently, in *Aloha Petroleum Ltd v. National Union Fire Insurance Co. (2024)*, the Supreme Court of the District of Hawaii held (i) that an “accident” includes an insured’s reckless conduct, and that Aloha acted recklessly, knowing of climate risk and emitting, and misleading the public of the dangers of emitting, greenhouse gases anyway, and (ii) that greenhouse gas emissions constitute a ‘pollutant’ under the policy’s pollution exclusion, thereby barring coverage.

For insurers, these types of cases demonstrate the need for careful consideration of policy wordings, especially exclusion clauses – though it remains to be seen whether courts in other jurisdictions would take the same approach to interpreting pollution exclusions.

- **Non-climate aligned litigation (US)**

Not all climate-related litigation supports environmental action. A growing subset of cases—particularly in the U.S.—seek to challenge climate regulations, ESG initiatives, and corporate decarbonisation strategies. Of the 226 cases filed in 2024, 60 cases (27%) were classified as non-alliant cases (cases not aligned with climate goals).³

There has been a spike in these types of claims in the USA since President Trump came into office, given the Trump Administration's pro-fossil fuel agenda. For example, in *Texas & Ors v. BlackRock & Ors*, 11 states have filed suit against BlackRock, State Street, and Vanguard, alleging antitrust violations for coordinating ESG strategies that allegedly suppressed U.S. coal production. The lawsuit seeks damages, divestiture, and injunctive relief. A federal judge has allowed most claims to proceed, despite noting that the evidence is largely circumstantial.

What to watch out for:

- **Artificial intelligence**

Artificial intelligence (AI) is inherently energy - and resource - intensive, raising concerns about its carbon footprint. While no climate-related litigation has yet targeted AI directly, scrutiny is growing, particularly where companies make sustainability claims about their practices and fail to consider the impact of their AI usage.

Yet, AI isn't inherently at odds with climate action. It is already being used to detect greenwashing (as seen in the ASA's Active Ad Monitoring system),⁴ optimise energy systems, streamline supply chains, and improve climate modelling. The risk lies in the disconnect between climate commitments and how AI is powered. If powered by renewables, AI can support sustainability goals. But until that shift happens, insurers should factor AI-related climate risk into underwriting and ESG assessments—both for insureds and their own operations.

- **Developments in attribution science**

By tracing specific climate impacts—like floods, heatwaves, and glacial melt—back to identifiable emissions sources, attribution science can turn global warming from a diffuse risk into a legally actionable harm. This is especially powerful in tort claims, where establishing causation is key.

Bridging science and law is no easy task. Scientists deal in probabilities and complex causal chains; lawyers require clarity and the ability to meet specific causal thresholds. But courts are beginning to close the gap. In *Luciano Lliuya v. RWE* a German court accepted that RWE had contributed 0.38% to global emissions and this could, in principle, translate into proportional accountability for flood risk in Peru. Though the case was ultimately dismissed, it set a powerful template for use of attribution science in establishing corporate liability for climate harm.

As attribution methods grow more precise, legal exposure for emitters—and those who insure them—is likely to rise. Insurers must now factor in the growing risk of climate liability claims. Attribution science isn't just reshaping litigation—it's reshaping risk portfolios.

Conclusion

Climate litigation is evolving in scope and sophistication, with implications for insurers both as underwriters and as corporate actors. Direct exposure arises from liability policies covering entities now facing climate-related claims, particularly under Environmental Liability, D&O, and General Liability policies. Indirect exposure stems from insurers' own ESG disclosures, investment strategies, and marketing practices, which are increasingly scrutinised in litigation and regulatory contexts.

Emerging developments—such as the use of AI in emissions tracking and the growing influence of attribution science—may shape the direction of travel. As the legal landscape continues to shift, insurers have an opportunity to engage proactively with these developments, ensuring that their practices remain aligned with evolving expectations and exposures.

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