

The 2026 ESG Disputes Landscape

As we settle into a new year, we can expect to see ESG disputes to be a staple of the litigation landscape. This is an ever-evolving area, with businesses encountering a complex regulatory environment and litigation risk in many areas in which they operate. We reflect on some of the developments from the past year and consider what we might come to expect in 2026 across a number of areas, including with respect to regulatory change and litigation in critical jurisdictions.

I. Corporate Due Diligence

The past year marked significant disruption on the corporate due diligence front in Europe, with EU legislation such as the Corporate Sustainability Due Diligence Directive (CSDDD) and the Corporate Sustainability Reporting Directive (CSRD) subject to substantial proposed revisions on the back of the European Commission's "Omnibus I" proposals.

In particular, with respect to the CSDDD, the omnibus package represents a significant scaling back of the original directive's ambitions. The much wider scope of the original directive that would have captured thousands of companies will be reduced, meaning fewer businesses will be subject to its requirements. Notably, certain substantive requirements have been removed entirely, including the obligation to prepare climate transition plans.

Following trilogue negotiations between the European Parliament, European Commission, and European Council in November 2025, a political agreement was reached and endorsed at the tail end of the year in December 2025. It is now expected that a revised directive reflecting the omnibus agreement will be published in the Official Journal of the EU by March 2026, with further time offered to Member States to transpose these requirements into national law.

Businesses operating both in Europe and overseas will welcome the greater clarity in relation to

their due diligence and compliance obligations, and we expect many to be continuing their efforts to prepare for implementation and to seek appropriate advice over the course of the coming year.

II. Climate Change

Last year was a watershed year for international legal developments which will undoubtedly shape domestic litigation strategies worldwide on climate change action.

Two new and landmark advisory opinions were delivered by the Inter-American Court of Human Rights and the International Court of Justice, both in July 2025. These opinions, will not formally binding, will have significant persuasive value and indeed are already being cited extensively in domestic proceedings around the globe. In particular, the opinions' determinations with respect to the responsibility of high-emitting States for transboundary harm as well as their treatment of the responsibility of corporate actors will carry significant normative weight. They are being invoked in cases from Brazil to South Africa, providing claimants with powerful legal tools to challenge both governmental and corporate conduct.

The appetite by claimants to pursue litigation on climate change matters continues to rise unabated. Various jurisdictions have proven to be popular venues – the Netherlands and Germany have seen many such cases in recent years. Last year, for example, the Higher Regional Court of Hamm delivered its judgment in *Lliuya v RWE*, a case where a Peruvian claimant sought compensation from an energy company for its contribution to climate change-related damage to his property in Peru. While the court ultimately dismissed the claim, it did find that it was possible for corporate emitters to be held liable in civil law for their contribution to climate-change harm.

Although climate claims have encountered mixed results in England, we can expect to see the boundaries of climate change law being pushed over the course of the coming year. For instance, while the prospects of derivative shareholder actions in England were stymied in part by the dismissal of *ClientEarth v Shell plc* [2023] EWHC 1897 (Ch), directors' duties in the context of climate change continue to be a live issue and one should not discount the possibility of such claims being renewed in the future. Indeed, extra-judicially, there are members of the senior judiciary (Lord Carnwath and Lord Sales) who have commented on such claims. The latter delivered a lecture in 2025 which suggested that *ClientEarth* should not be viewed as a death knell for climate-related derivative claims; indeed, he suggested that while there may be significant hurdles, other cases may well be different, particularly if accompanied by stronger factual evidence of financial harm and depending on the nature of consideration by the relevant board of climate risk. Elsewhere, a group of Philippine claimants foreshadowed a new claim against Shell in pre-action correspondence, arguing that Shell's actions materially contributed to climate change and exacerbated the impact of Typhoon Odette which struck the Philippines in December 2022, raising novel issues that the English courts will grapple with in 2026 and beyond.

III. ESG Litigation

Beyond climate-specific matters, broader ESG litigation remains active and is expected to continue over the course of the coming year. Jurisdictions like England have been particularly prolific in their reception of transnational ESG disputes: 2025 saw the Court accept jurisdiction in *Da Silva v Brazil Iron Ltd* [2025] EWHC 606, a case concerning environmental damage associated with an iron ore mine in Brazil, and the delivery of a watershed judgment by the High Court in *Municipio de Mariana v BHP Group plc* [2025] EWHC 3001 (TCC), which found in favour

of the claimants on issues of liability in relation to the collapse of the Fundão dam in November 2015.

Aside from traditional tort-based ESG claims, an emerging area across multiple jurisdictions is securities litigation premised on ESG compliance failures or misrepresentations. There is growing prospect that ESG compliance – or the lack thereof – may be used as the lens through which claims of market manipulation or misleading statements are advanced. Companies making public commitments on ESG matters should be aware that these statements may form the basis for securities claims if they are later shown to be inaccurate or misleading, particularly where investors have relied upon them in making investment decisions. Such claims are becoming increasingly sophisticated, with claimant groups and litigation funders developing expertise in coordinating cross-border actions and leveraging regulatory investigations to support civil claims. The intersection of ESG disclosure requirements, investor protection, and corporate liability is likely to generate significant litigation activity in the coming years.

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:



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