Climate Litigation Risks for Business Enterprises

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## Key Climate Change Risks

### Physical Risk
- Physical threats to business operations
- Gradual changes to climate
- Extreme weather events
- Financial and economic:
  - Physical damage to assets
  - Disruption to supply chain and production
  - Increased operating costs

### Transition Risk
- 2019–2050 markets will shift towards Paris Agreement’s “Net Zero” goal
- Changing consumption patterns
- New competition
- Product viability and write offs
- Adaptation costs

### Liability Risk
- Rights-based climate action
- Financial liability cases
- Regulatory action

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**Source:** Mark Carney, Bank of England Governor
Tropical Cyclone Tracks (1948-2010)

Source: Department of Energy, using data from Climate Data Section, Climatology & Agrometerology Branch, PAGASA, DOST
Climate NOW!

Homework later!
Liability Risk

- Rights-Based Action
- Regulatory Action
- Financial Liability

Source: ClientEarth
Rights-Based Action

- Human Rights
  - Other Rights
    - Due Process
    - Statutory Rights
  - Constitutional Rights
## Rights-Based Action

### Human rights claims
- *Urgenda Foundation v Kingdom of the Netherlands* (2018)
- *In re Greenpeace Southeast Asia and Others* (2016)

### Constitutional rights
- Rights to life, clean environment, sustainable development
- *BELA and Others vs Bangladesh* (2009)
- *Shrestha vs Prime Minister and Others* (2018)

### Other Rights—Permitting Challenges
- Challenges to coal mining and coal-fired power
- *EFL v. Chairman Ceylon Electricity Board et al* (2016)
Financial Liability

Failure to Mitigate

Shareholder Action

Failure to Adapt
### Financial Claims

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<thead>
<tr>
<th>Failure to Mitigate</th>
<th>Failure to Adapt</th>
<th>Shareholder Action</th>
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<tbody>
<tr>
<td>• Theme: big oil’s carbon emissions contributed to climate change. Cities want emissions to stop and funding to adapt to climate change</td>
<td>• Wrongdoer’s failure to make its operation or infrastructure climate resilient caused (or may cause) damage to injured party</td>
<td>• Duty to Disclose:</td>
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<td>• County of Santa Cruz v. Chevron Corp. (2019)</td>
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<td>• Fiduciary Duty:</td>
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<td>• ClientEarth v Enea SA (2019)</td>
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# Increased Regulatory Action

<table>
<thead>
<tr>
<th>Category</th>
<th>Case Study</th>
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<tbody>
<tr>
<td>Air and Water Code Violations</td>
<td>Harris County, Texas v. Arkema Inc. (2017, Texas District Court)</td>
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| Hiding Emissions                      | • Volkswagen—dieselgate has cost Volkswagen $25 billion in penalties and fines so far in the US  
                                        • Suzuki Motor, Mazda Motor, and Yamaha Motor conducted improper fuel economy and emissions tests |
| Misleading and Deceptive Conduct      | Australian Competition & Consumer Commission v. GM Holden Ltd. (2008, Federal Court of Australia) |
| Illegal Release of Carbon Emissions   | PT. Selatnasik Indokwarsa and PT. Simpang Pesak Indonesia v. Ministry of Energy (2012, Supreme Court of Indonesia) |
| Protecting Biodiversity               | 10 years to action Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay (2008) |
Future Litigation Trends

We will see more and more of these types of claims

- Holding government to their legislative and policy commitments
- Rights-based action
- Private law claims for damages—failure to adapt, nuisance, negligence, failure to disclose
- Increased regulatory action
Future Litigation Trends

We will also see these...

- Technology establishing links and proximate cause
- Social media enabling networked litigation
- Crowdfunding
- International transparency networks
- International Court of Justice advisory opinion??
MethaneSAT by Environmental Defense Fund

• Launches in 2021
• Measures methane globally
• All data posted online and freely available
• Detects leaks along natural gas supply chain
Climate Litigation

- Shareholder Duties
- Food Security
- Forest Protection
- Government Action
- Carbon Trading
- Energy
- Road Infrastructure
- Reducing Emissions
- Pollution
- Urban Planning
- Factories
- Adapting Infrastructure
- Compliance
- Water Body & Coastal Protection
- Solid Waste Management
- Biodiversity Protection
It's very easy to be lost in the headlines ... but what we really want to do ... is not focus on the headlines. So I'm not going to give you the economic outlook ...

We are going to really focus on risks, opportunities, that are out there ... I'm going to start with one which is clearly on everybody's mind - climate change.

Christine Lagarde