



WORLD STEEL ASSOCIATION

Open Forum 2024

A Climate Conversation with the Steel Industry

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Topics Covered

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 - ❖ Trend 1: “Deception Campaigns” and Greenwashing
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Climate Litigation Basics



“Climate litigation has also successfully challenged governments’ authorizations of high-emitting projects setting precedents in favor of climate action. Climate litigation against private sector and financial institutions is also on the rise”.

IPCC (2022), AR6, WGIII, Chapter 13

- “Climate change litigation” broadly refers to legal action seeking redress of damages from climate change.”
- Climate litigation is a tool to hold governments and corporations accountable for contributions to climate change and its impacts.
- May be brought by a variety of stakeholders (e.g., shareholders, public interest groups, eNGOs, property owners, governments).
- Increasingly used to :
 - challenge the veracity of climate commitments (e.g., “carbon neutral” or “net zero”),
 - enforce regulatory requirements,
 - spur climate action, or
 - seek damages for climate impacts on human health and the environment as well as economic interests of shareholders.

Climate Litigation Basics (cont.)

- ➔ While the majority of climate-related cases stem from the Global North, the number of climate litigation cases in the Global South has continued to grow.

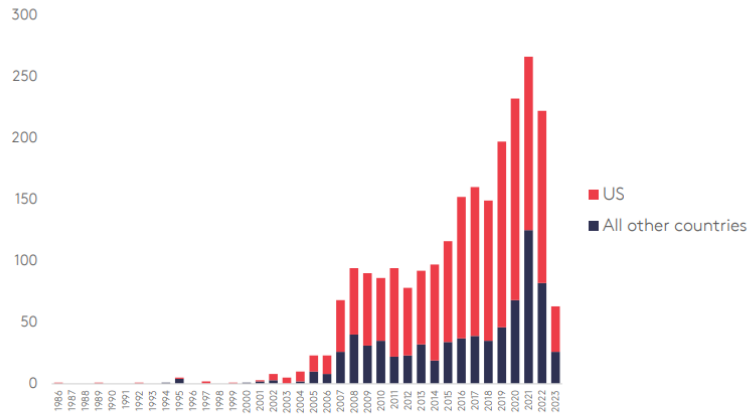
As of 2023, 135 cases have been brought in the Global South, many with innovative arguments based on human and constitutional rights. This pales to the over 2300 cases being brought worldwide

- ➔ Many cases have been brought against companies that extract or the supply fossil fuels/energy; these continue to proliferate.
- ➔ New and ongoing cases seek to clarify legal obligations of private companies in terms of disclosure requirements and managing portfolio emissions
- ➔ Other energy intensive sectors, such as steel, are vulnerable to similar challenges.
- ➔ Future litigation trends point to a more focused assessment on personal responsibility, such as:

- Accountability to shareholders for duty of care.
- Substantiation of claims with science.
- Overreliance on carbon removal technologies, carbon credits and not on process changes and efficiencies.
- Failure to meet environmental, social and governance (ESG) policy and greenhouse gas (GHG) emission reduction goals.

Climate Litigation in Numbers

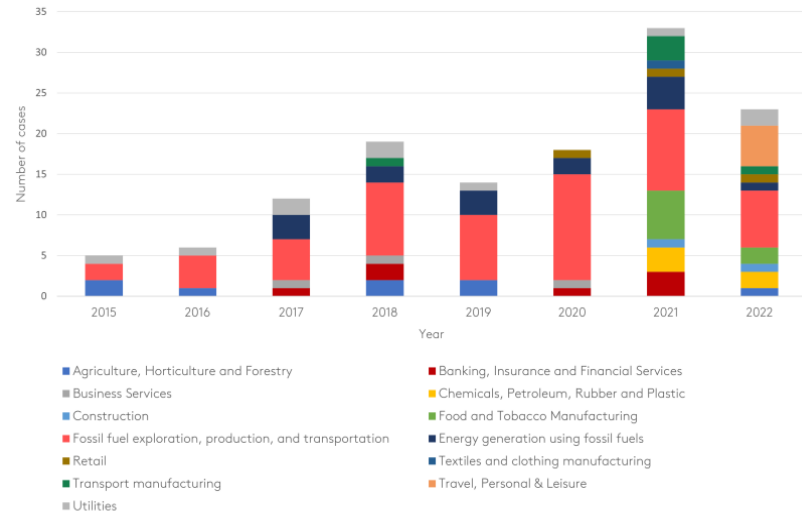
Figure 1.1. Total climate change cases over time, US and non-US (1986 to 31 May 2023)



Note: Data collection for 2023 is still underway, and there may be a small delay between cases being filed and being identified and processed for inclusion in the databases, therefore the 2023 data are incomplete.

Source: Authors based on Sabin Center databases

Figure 1.5. Number of cases against corporations by sector type, including US and Global cases (2015–2022)



Climate Litigation in Numbers (cont.)

Figure 1.6. Outcomes in global climate litigation

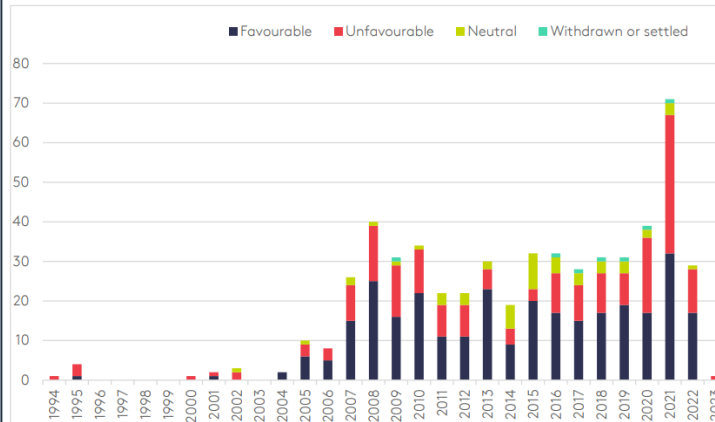
■ Favourable ■ Neutral ■ Withdrawn or settled ■ Unfavourable



Source: Authors using Sabin Center's databases

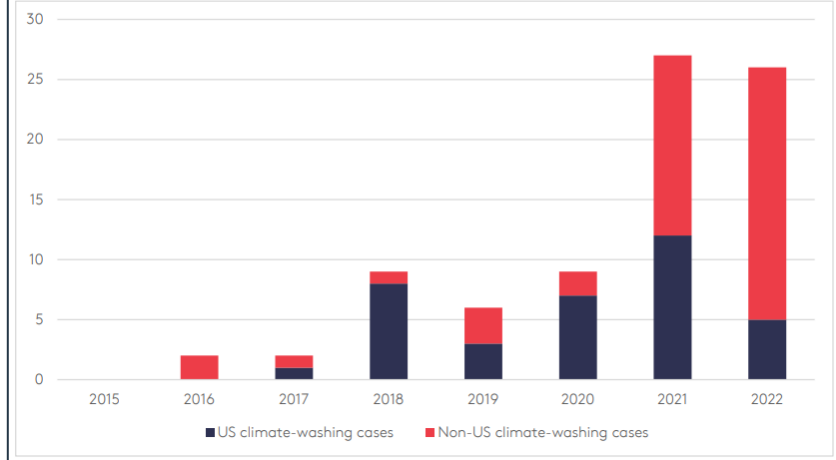
Figure 1.7. Outcomes in Global climate cases over time

■ Favourable ■ Unfavourable ■ Neutral ■ Withdrawn or settled



Source: Authors using Sabin Center's databases

Figure 2.1. Climate-washing cases against corporate actors in the US and outside the US, 2015-2022



Climate Litigation Trends

- 1 Deception Campaigns and Greenwashing
- 2 Accountability for Products and Operations
- 3 Inaccurate, Inadequate or Untimely Disclosures
- 4 Insufficient Due Diligence on Carbon Projects
- 5 Government Enforcement of Regulations

Trend 1: “Deception Campaigns” and Greenwashing

- Complaints allege deceptive or misleading green marketing or omissions of material facts contrary to green claims that products, goals or operations are environmentally or climate friendly (e.g., climate neutral, climate friendly, Sustainable)
- Most U.S. cases are still pending.
- European and International courts appear more willing to rule against defendants and prohibit misleading advertising.
 - Mislead the public to believe their products and operations have less global warming impacts than they actually do.
- Alleged injuries:
 - Public continues to purchase their products not realizing the impacts to the climate; or
 - Meaningful development on alternative energies is delayed.

Case Examples

➔ *State v. American Petroleum Institute (D.Minn. 2020)*

- Complaint alleged defendant undermined the science of climate change, purposefully downplaying the role their products play in climate change through “a campaign of deception.”
- The State asked for defendants to publish all their research relating to climate change, disgorgement of profits from this unlawful conduct and fund a public education campaign in Minnesota regarding climate change.
 - The issue was recently remanded to state court and still ongoing.

➔ *Australian Parents for Climate Action v. EnergyAustralia (Australia, 2023)*

- Complaint alleged defendant’s marketing of “go neutral” products amounted to misleading or deceptive conduct because its carbon offset initiatives do not “cancel out” or “neutralize” the climate impact these products and their consumption does not have a positive impact on the environment.
 - This litigation is still ongoing.

➔ *ASA Ruling on Shell UK Ltd (U.K., 2023)*

- Complaint alleged that Shell, by focusing on its more environmentally friendly energy products, misled public to believe a significant proportion of business comprised lower-carbon energy products.
- The U.K. advertising commission (ASA) ruled against Shell and ordered that the ads may not appear again in such form.
- ASA instructed future ads featuring environmental claims must not mislead by exaggerating or omitting material information the proportion of business activities comprised of lower carbon activities.

Trend 2: Accountability for Products and Operations

- Plaintiffs attempt to hold corporations liable for either the contributions of their products or operations to climate change or their failure to adapt to climate risks.
- Common claims include: “the oil and gas industries have known about global warming impacts of GHG emissions,” but still engage in deceptive and misleading advertisements to:
 - Ridicule the science or overstate the economic impacts of climate mitigation activities;
 - Diminish the GHG impact to global warming; or
 - Operations continue to contribute to global warming;
- Mixed results.
 - Plaintiffs often request defendants change their operations and fund local climate-related initiatives.
 - Some courts will order mitigations plans and fines; others rule that the prima facie case cannot be established.
- Typical claims include:
 - Failure to adapt facilities and operations to climate change.
 - Direct causation to certain climate-related disasters.
 - Failure to set appropriate emissions target or manage climate risks.
 - Human rights or rights of nature violations.

Case Examples

➔ *Milieudefensie et al. v. Royal Dutch Shell plc. (Netherlands)*

- Hague District Court issued landmark ruling against Royal Dutch Shell, mandating it to set a more ambitious emissions reduction goal and reduce emissions 45% by 2030, based on 2019 levels and across Scope 1, 2 and 3 emissions, in line with the Paris Agreement.
 - The case is being appealed.

➔ *Asmania et al. v. Holcim (Indonesia, 2022)*

- Citizens in Indonesian (Pari) sued a Swiss cement company for CO₂ emission that contributes to climate change causing sea level rise and endangering livelihoods of the residents.
- Plaintiffs request compensation, specific CO₂ emission reduction targets and funding to Pari's adaptation initiatives.
 - Case is still pending.

➔ *Conservation Law Foundation v. Shell Oil Co (D. Conn. 2021)*

- Claims defendants failed to prepare their fuel terminals for climate change, including sea-level rise and more frequent and more severe storms in violation of the Clean Water Act and Resource Conservation and Recovery Act.
 - The litigation is still ongoing.

Trend 3: Inaccurate, Inadequate or Untimely Disclosures

- Regulatory enforcement actions for failure to disclose or report GHG emitting activities adequately, accurately or timely.
- Typical claims:
 - Insufficient disclosure on organizations' climate-related metrics, including indirect climate impacts and CO2 emission disclosures.
 - Failure to file reports regarding industrial GHG imports.
 - Shareholder actions on inappropriate carbon pricing.
 - Compliance issues regarding Certified Emissions Reductions (CERs), mainly in Europe.
- Courts have decided most of these failure to disclose matters against defendants.

Case Examples

➔ *Development YES - Open-pit Mines NO v. Group PZU S.A. (Poland, 2018)*

- Complaint concerned the indirect impact of activities of PZU on climate change, the lack of transparency regarding CO2 emissions and the impact of financially insuring the coal mining sector in Poland.
- The regulatory agency recommended PZU to disclose relevant non-financial information in the future and adopt policies that respect human rights and the environment.

➔ *Metamorphose v. TotalEnergies (France, 2023)*

- Shareholders sued for unlawful dividends alleging the company erroneously valued future carbon prices and failed to account properly for its Scope 3 GHG emissions, resulting in an over-evaluation of its assets.
 - The case is still pending.
- Unique case that could prove influential given comprehensive ESG-related disclosure requirements in Europe (CSRD) and the U.S. Securities and Exchange Commission (SEC).

➔ *Deutsche Bank AG v. Total Global Steel Ltd. (UK, 2012)*

- Deutsche Bank sued Total Global Steel for breach of contract for the sale of CERS.
- The court ruled against Total Global Steel, finding that its surrendered CERS were not available to be purchased by Deutsche Bank since they were used already for compliance purposes.

Trend 4: Insufficient Due Diligence on Carbon Projects

- Targets companies, mostly banks and their advisors and other groups, who have invested in questionable carbon credit projects and companies that could be viewed as supporting illicit projects.
- Could be expanded to the extractive industries as they invest in carbon-credit projects to reduce their carbon footprints.

➡ *Amorema e Amoretgrap v. Sustainable Carbon and Others (Brazil, 2021)*

- Group of defendants (accounting firms, associations, banks) sued for acquiring carbon credits from a project that could not be verified.
- Several questionable projects formed the basis of other litigations (e.g., on deforestation or environmental preservation initiatives in the Amazon, Brazil.)
 - The case is still pending.

Berrin v. Delta Air Lines Inc. (C.D. Cal, 2023)

- ➡ • Alleged that Delta’s investment in the carbon offset market does not truly make it a “carbon neutral” airline because of various foundational issues such as inaccurate accounting, non-additional effects on worldwide carbon levels because the projects would have occurred without offset market investment, speculative reductions that cannot be verified, etc.
 - Case is pending.

Blackburn v. Etsy, Inc. (C.D. Cal. 2023)

- ➡ • Similar claim as the Delta Airline case.
- Claim alleged that the carbon-offset advertising is greenwashing because of underlying problems with the green projects such as fraudulent accounting or methodological errors with estimates, etc.
 - Case is dismissed with leave to amend due to standing issues.

Trend 5: Government Enforcement of Regulations

- These claims are initiated by the government for various noncompliance issues:
 - Inadequate emission control or reduction plans.
 - Fraudulent reporting.
 - Failure to file certain climate-related reports.
 - Failure to verify or falsify energy sources.
- Most regulatory/administrative actions have been decided against defendants.
- Failure to take climate consideration into account in environmental impact assessments

Case Examples

➔ Re: Danskammer Energy Center DEC Permit (NY, 2023)

- New York Department of Environmental Conservation denied the company's Title V Air Permit because the company's emission activities were inconsistent with New York's mandatory emissions reduction targets.
 - Case was decided against the company. Consequently, the company had to pause its plans to construct a methane gas plant in NY.

➔ Federal Environmental Agency (IBABA) v. Siderurgica Sao Luiz Ltd. And Martins (Brazil, 2019) [Steel Industry]

- Brazil's Attorney General filed a class action lawsuit against a steel company and its managing partner for environmental and climate damages allegedly caused by the company's continuous and fraudulent use of illegally sourced coal.
- The AG requires the company to adopt an environmental integrity program as one of the remedies.
 - Case is still pending.

➔ In re BMP International, Inc. (EAB, 2023)

- Administrative penalty assessment proceeding for alleged violations of the mandatory GHG reporting requirements,
- The Environmental Protection Agency's (EPA) Environmental Appeals Board ordered the company to pay a civil penalty of \$382,473 for failure to file timely annual reports of industrial greenhouse gas imports.

➔ People ex rel. California Air Resources Board v. Paramount Petroleum Corp. (Cal. Super. Ct., 2016)

- California sought penalty against this provider of transportation fuels for violations of the state's Low Carbon Fuel Standard because allegedly the products the company imported into California did not meet the carbon intensity standards and defendants failed to obtain the necessary carbon credits to offset the fuel's GHG emissions. Also alleged that the defendants submitted false information to the California Air Resources Board in compliance reports.
 - Case is still pending.



Takeaways

- Climate-related litigations and regulatory actions continue to grow and diversify to major emitting sectors beyond oil and gas.
- Significant scrutiny of advertising and marketing initiatives to assure fair and accurate depictions of climate impacts of products and operations.
- Enhanced due diligence on “credit offset” investments and marketing of carbon projects necessary.
- Enforcement against GHG-related reporting and climate disclosures on the rise.
 - Risk is high in regions with established GHG reduction targets.
 - Risk further heightened by mandatory comprehensive climate disclosure requirements in many jurisdictions.
- Using carbon credits alone not enough for an emissions mitigation strategy.
- Carbon-related instruments can expose companies to enforcement risks:
 - Complex or uncertain regulatory requirements.
 - Challenging verification and validation of offset projects.
- Businesses ultimately may lose right to operate for failure to meet emission targets.

Questions?



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Thank You!

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