

CMS Insurance Sector Group webinar programme

# Developments in Climate Change Law and Litigation

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5 July 2023

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# Your speakers today



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# What we will cover

01



An overview of developments in climate change litigation: LSE/Grantham Institute report, published 29 June 2023

02



Key climate change litigation decisions & relevance to Insurers

03



Specifically on “climate-washing”: claims and regulatory developments

04



Future trends that may impact Insurers

05



Developments at Industry Level

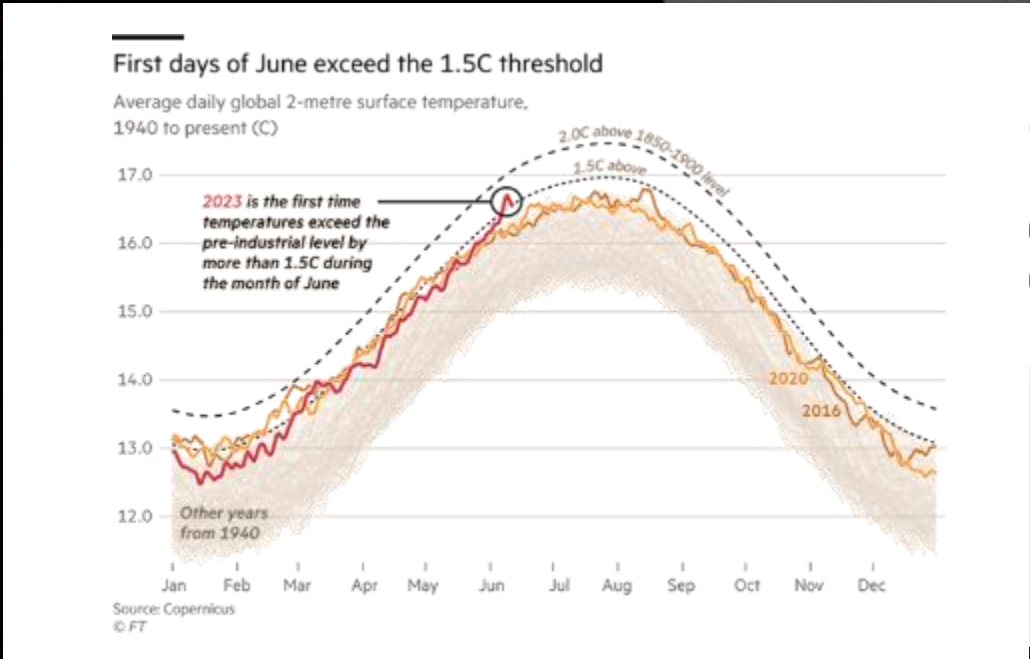
- Exclusion of Climate Risk?
- Industry Body Engagement: GFANZ and NZIA



Paris Agreement 2015

The Paris Agreement 2015 - legally binding international treaty. Overarching goal is to hold “the increase in the global average temperature to well below 2°C above pre-industrial levels” and pursue efforts “to limit the temperature increase to 1.5°C above pre-industrial levels.”

Climate graphic of the week | Financial Times



IPCC Synthesis Report 2023

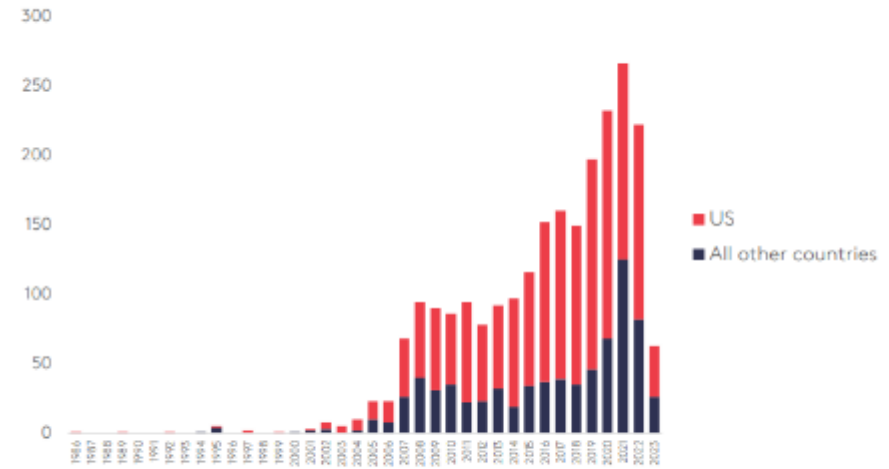
ipcc Climate Change 2023: Synthesis report: “Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020”

Source: [Climate Reports | United Nations](#)

# Global trends in climate change litigation: 2023 snapshot, 29 June 2023

► Report from LSE/Grantham Research Institute

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

‘....more than

## 2,341 cases

have been captured in the Sabin Center’s climate litigation databases.

around

## 2/3

of these cases (1,557) have been filed since 2015, the year of the Paris Agreement.

Of these,

## 190

were filed in the last 12 months.’  
[para]



# Global trends in climate change litigation: 2023 snapshot, 29 June 2023

## ► Findings relevant to claims against companies/Insureds

**Corporate framework:** ‘17 cases have been filed against large corporations challenging their climate plans and/or targets on the basis that these are inadequate. Some of these cases may also involve arguments about ‘climate-washing’

**Climate-washing:** ‘57 cases challenge inaccurate government or corporate narratives regarding contributions to the transition to a low-carbon future, or misinformation about climate science. The overwhelming majority of these (52) have been filed against corporations.’

**Polluter pays (compensation)** : ‘17 cases seeking monetary damages or awards from defendants based on alleged contribution to climate change harms have been filed. These include cases seeking compensation for past and present loss and damage associated with climate change;...’

**Turning off the taps** : ‘28 cases aimed at preventing the flow of finance to high emitting or harmful projects or activities have been filed globally, 14 against public bodies or state-owned financial institutions..., and 12 against private parties including bank and pension funds....’



Court set to rule on INEOS's new  
€3bn plastics project



Shell under fire: Climate change litigation showcases  
extraordinary impact of ESG | The Insurer

ClientEarth<sup>®</sup>



Source: Shell under fire: Climate change litigation showcases  
extraordinary impact of ESG | The Insurer



Source: BNP Paribas rattrapée pour ses financements à de nouveaux projets  
d'exploitation d'énergies fossiles | Énergies de la Mer (energiesdelamer.eu)

# What climate change litigation are you seeking in your jurisdiction & relevance to Insurers?

► Findings relevant to claims against companies/Insureds

- *ClientEarth-v-Flemish Region*, re INEOS plastics plant (**Belgium**)
- *Notre Affaire à Tous & others-v- BNP Paribas; Envol Vert & others-v-Casino ; Surfrider Europe & Others-v- Danone; & Sherpa & Others-v- Total* (**France**)
- *ClientEarth-v- Shell's Board Of Directors* (**UK**)
- *Milieudefensie-v-Shell; Shareholder activism, 'Follow This' ; & Activist disruption: Extinction Rebellion Judgment 30 August 2022* (**Netherlands**)

# On Climate Washing, what regulatory and claims developments are you seeing?

- ▶ Findings relevant to claims against companies/Insureds
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- *Key points (from LSE report) and trends in Belgium*
  - *Friends of the Earth France and Notre Affaire à Tous-v-Total*
  - *Fossil Free Netherlands-v-KLM (re 'Fly responsibly' campaign)*





# Future trends that may impact Insurers



- Further focus on corporate and financial institutions
- Stakeholder activism
- Events resulting in business disruption
- Globalisation of climate litigation
- New focus of climate litigation: biodiversity, ocean protection, extreme weather events & supply chain liability
- Insurability of climate risks?



Construction risks? Professional Indemnity and Construction Product liability: *Asmania-v- Holcim*





# Developments at Industry Level

- *Exclusion of Climate Risk?*
- *Industry Body Engagement: GFANZ and NZIA*



# Exclusion of Climate Risk

- *Aloha Petroleum-v- AIG insurance (US case)*
- *Lloyds LMA5570 model Climate Change Exclusion*

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## US fossil fuel firm sues insurer for refusing to cover climate lawsuit

Aloha Petroleum's case against AIG could set precedent as to whether firms are protected against climate damage claims



Local governments in Hawaii have filed climate-related claims against Aloha Petroleum. Now Aloha is taking its insurer to court. Photograph: DEA/G. Sioen/De Agostini/Getty

Source:  
[US fossil fuel firm sues insurer for refusing to cover climate lawsuit | Climate crisis | The Guardian](#)

# Industry Body Engagement



Glasgow Financial Alliance for Net Zero (GFANZ) created by former Bank of England governor, Mark Carney, before the UN climate summit COP26 in 2021

The Net-Zero Insurance Alliance (NZIA) created in association with (GFANZ)



‘NZIA members have committed to transition their insurance and reinsurance underwriting portfolios to net-zero greenhouse gas (GHG) emissions by 2050, consistent with a maximum temperature rise of 1.5°C above pre-industrial levels by 2100, in order to contribute to the implementation of the Paris Agreement on Climate Change’.

**‘BUT:** ‘Anti-ESG backlash’ : May 2023 twenty-three Republican state attorneys wrote to Net-Zero Insurance Alliance (NZIA) members stating “serious concerns” about whether the NZIA’s requirements complied with federal and state laws. As a result of growing US political pressure and alleged anti-trust law risks, around 50% of NZIA members have left, leaving around 12.



Image source: Net-Zero Insurance Alliance – United Nations Environment – Finance Initiative (unepfi.org)



# Questions?

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Global trends in climate change litigation: 2023 snapshot - Grantham Research  
Institute on climate change and the environment ([lse.ac.uk](https://www.lse.ac.uk))



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