

CMS Insurance Sector Group webinar programme **ESG Risks for Directors & Officers**

31 May 2023

Simon Garrett (UK)
Thomas Böhm (Austria)
Virginie Frémat (Belgium)
Bart-Adriaan de Ruijter (The Netherlands)

Giorgio Valentini (Italy)
Chris Bradshaw (UK)
Luke Gething (UK)

Your speakers today



Simon Garrett | Partner

T: +44 20 7367 2786

E: simon.garrett@cms-cmno.com



Thomas Böhm | Partner

T: +43 1 40443 3650

E: thomas.boehm@cms-rrh.com



Virginie Frémat | Partner

T: +32 3 206 01 57

E: virginie.fremat@cms-db.com



Giorgio Valentini | Senior Associate

T: +39 0647 8151

E: giorgio.valentini@cms-aacs.com



Bart-Adriaan de Ruijter | Partner

T: +31 20 3016 426

E: bart-adriaan.deruijter@cms-dsb.com



Chris Bradshaw | Partner

T: +44 20 7367 3832

E: chris.bradshaw2@cms-cmno.com



Luke Gething | Senior Associate

T: +44 20 7367 3106

E: luke.gething@cms-cmno.com

Content



1

Types of
ESG
litigation

2

Panel
discussion



1

Types of ESG litigation

ESG Litigation Risks



Activist Litigation

Claims seeking social change, rather than winning damages

- *Urgenda v Dutch Government*
- *Friends of the Earth & others v Shell* (Dutch claim), followed by the more recent claim by *ClientEarth v Shell's directors* (UK claim)
- *Lliuya v RWE*
 - Challenge of causation & attribution science

Securities Litigation (& other class actions)

US Securities Claims

- *Re Volkswagen 'Clean Diesel'* – alleged violation of securities laws by failing to disclose emissions fraud
- *Rosencrants v Danimer Scientific* – securities class action for alleged misleading statements about biodegradability of products
- *Ramirez v Exxon Mobil Corporation* – securities class action alleging failure to disclose climate risks
- *SEC v Vale* – securities fraud claim alleging concealment of risks of damn failure and misleading statements to investors

Also consumer class actions

- *Commodore v H&M* – class action alleging consumers misled into paying premium for 'sustainable' clothing

Regulatory Investigations

Environment ('greenwashing')

- **DWS**

Regulatory investigations by BaFin and SEC regarding alleged misrepresentations of ESG credentials of certain funds. Offices raided by BaFin in May 2022. Civil claim recently brought by a German consumer group

Social & Governance

- **Wells Fargo**

Investigation into alleged sham interviews in connection with diverse recruitment policy

Legislative Developments – disclosure obligations

Increasing disclosure obligations in various jurisdictions

- Corporate reporting – i.e. in annual reports
- Specific focus on asset management industry

EU

- Sustainable Finance Disclosure Regulation;
- Taxonomy Regulation; and
- Corporate Sustainability Reporting Directive (not yet in force)

UK

- FCA Listing Rules LR 9.8.6R(8) and LR 14.3.27R;
- Companies (Strategic Report)(Climate-related Financial Disclosure) Regulations 2021; and
- FCA consultation paper on Sustainability Disclosure Requirements (greenwashing), October 2022 (not yet in force)

2

Panel discussion

Panel discussion

- 01** Are there high-profile examples of ESG claims against D&Os?
- 02** Are there Climate Change disclosures/regulations for companies? How will this lead to claims against D&Os?
- 03** Are there any reforms on what company reports and accounts should disclose with regard to ESG risks?
- 04** What are the supply chain liability risks for corporates and their directors?
- 05** Are you seeing activist litigation (i.e. seeking social change) leading to claims against D&Os?
- 06** Are there Greenwashing claims/regulatory investigations in financial services, and regulatory action/investigations against D&Os?

Q&A



Simon Garrett | Partner
T: +44 20 7367 2786
E: simon.garrett@cms-cmno.com



Thomas Böhm | Partner
T: +43 1 40443 3650
E: thomas.boehm@cms-rrh.com



Virginie Frémat | Partner
T: +32 3 206 01 57
E: virginie.fremat@cms-db.com



Giorgio Valentini | Senior Associate
T: +39 0647 8151
E: giorgio.valentini@cms-aacs.com



Bart-Adriaan de Ruijter | Partner
T: +31 20 3016 426
E: bart-adriaan.deruijter@cms-dsb.com



Chris Bradshaw | Partner
T: +20 7367 3832
E: chris.bradshaw2@cms-cmno.com



Luke Gething | Senior Associate
T: +20 7367 3106
E: luke.gething@cms-cmno.com



Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.

cms-lawnow.com

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice. It was prepared in co-operation with local attorneys.

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices; details can be found under "legal information" in the footer of cms.law.

CMS locations:

Aberdeen, Abu Dhabi, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Bergen, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Cúcuta, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Liverpool, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Munich, Muscat, Nairobi, Oslo, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Shanghai, Sheffield, Singapore, Skopje, Sofia, Stavanger, Strasbourg, Stuttgart, Tel Aviv, Tirana, Vienna, Warsaw, Zagreb and Zurich.

cms.law