

CMS Insurance Sector Group webinar programme

ESG Risks for Directors & Officers

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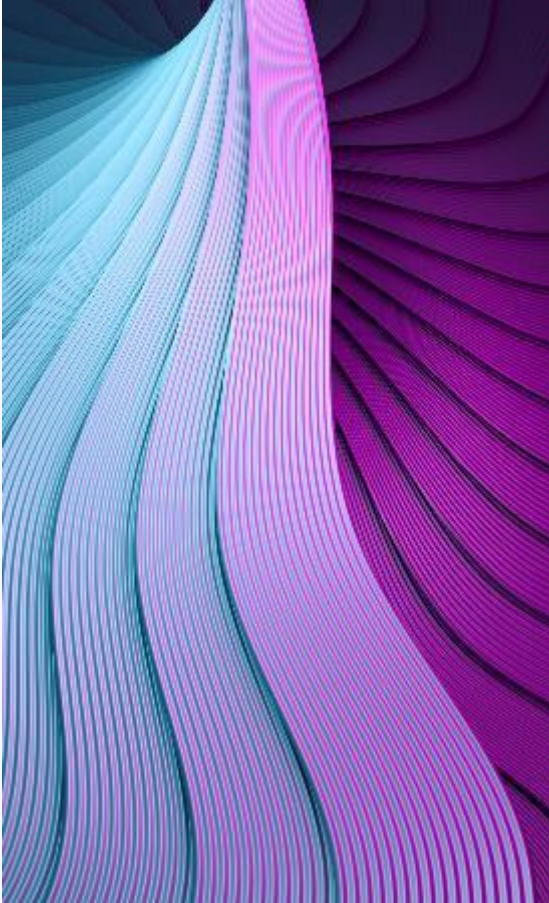


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Types of
ESG
litigation

2

Panel
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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



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