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A new wave of claims?

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‹ Previous
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Advocacy group ClientEarth has recently filed a lawsuit in the High Court against Shell's board of directors. Insurers and businesses alike will be watching the case with interest, as it may the first in a new wave of claims.

The claim

ClientEarth alleges Shell's board of directors have breached their duties as directors by failing to adopt and implement an energy transition strategy that aligns with the Paris Agreement. The agreement aims to limit the rise in global heating to below 1.5 degrees Celsius compared with pre-industrial levels.

According to ClientEarth, this claim is: '*The first attempt to hold a company's Board of Directors personally liable for failing to properly prepare for the energy transition*.'

ClientEarth specifically alleges a breach of s.172 Companies Act 2006, which states that:

'(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole…'

In response, Shell asserts that its energy transition strategy is consistent with the Paris Agreement. Shell also announced further plans to reduce its scope 1 and 2 emissions by 50 per cent by 2030. However, this pledge does not include its scope 3 emissions, which are reported to account for 90 per cent of Shell's overall emissions. Senior Lawyer at ClientEarth, Paul Benson commented:

'*The board is persisting with a transition strategy that is fundamentally flawed, leaving the company seriously exposed to the risks that climate change poses to Shell's future success — despite the board's legal duty to manage those risks*'.

Further, ClientEarth alleges that Shell is continuing to invest in the development of new oil and gas fields, whilst only investing a small percentage of its capital in renewable energy.

Interestingly, ClientEarth has been backed by Shell's institutional investors holding more than a 500-billion-dollar stake in the energy company, making this a derivative action against the energy firm. Mark Fawsett, a chief investment officer of NEST (one of the public investors) states:

"*Investors want to see action in line with the risk climate change presents and will challenge those who aren't doing enough to transition their business… We hope the whole energy industry sits up and take notice*."

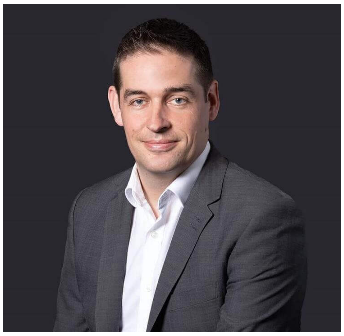
The lawsuit comes after an earlier Dutch court ruling in 2021 that Shell must cut its global carbon emissions by 45% compared with 2019 levels. ClientEarth claims that the board's alleged failure to comply with that earlier judgment amounts to a further breach of its legal duties. This highlights the potential for cross-jurisdictional enforcement of environmental obligations to enforce climate-related rulings.

Considerations for insurers and underwriters

Only time will tell whether such environmental claims become more commonplace. Insurers, particularly MLP insurers, may want to consider whether their underwriting identifies business that are more likely to be a target for such claims. They are also advised to check their policy wordings to ensure they have sufficient policy protections in place.

Contents

Key contact



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