Article

Greenwashing: the environmental risk that should be on everyone’s radar

Carl Puttock • April 23, 2023

Climate change-related litigation is on the rise, and the organisations named in court filings are from an increasingly wide range of industry sectors.

Perhaps aligned to this, climate change and other environmental risks appear to be rising up the corporate agenda, as identified in our recent Risk & Resilience 2023 research where 24% of global business executives ranked environmental risks on a par with business risks, such as supply chain disruption, corporate reputation, as their most pressing areas of concern for their businesses.1

Research published by the Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science, found that 475 climate litigation cases were filed around the world between 1 January 2020 and the end of May last year. 2

While the majority of cases have been brought against governments, and much of the remaining litigation has been focused on fossil fuel companies, the report found that, more than half of the 38 cases filed against corporate defendants in 2021 featured companies in other sectors, including food and agriculture, transport, plastics and finance.

Within this wider legislative trend, there is also a growing incidence of cases brought against firms for engaging in so-called ‘greenwashing’. This can range from accusations that firms are making unsubstantiated or misleading claims about the environmentally friendly credentials of their products or services, to making highly selective disclosures about the environmental impacts of their business practices, to misleading and/or overstated claims about their performance in the context of halting climate change (sometimes referred to as ‘climate-washing’). 3

This type of litigation has impacted a number of industry sectors but in particular, the focus is on financial institutions. By way of example DWS, the asset management unit of Deutsche Bank, was hit with a consumer class action in Frankfurt in October last year, with the consumer group alleging the company's Invest Environmental, Social and Governance (ESG) Climate Tech fund had over-stated its green credentials in its marketing materials. We have also seen regulators take action in the US with Goldman Sachs and BNY Mellon both resolving charges with the Securities and Exchange Commission (SEC) in 2022, which illustrates the intensifying scrutiny that so called 'sustainable' or 'green' funds are facing.

Greenwashing has also become a competitive issue, as an Italian court ruling at the end of last year demonstrated - in the first case of its kind. The Court of Gorizia upheld an injunction brought by automotive upholstery supplier Alcantara against rival manufacturer Miko, on the basis that claims made by Miko about the environmental credentials of its faux suede microfibre material were not only unsustainable but constituted an unfair competitive advantage.4

Another outcome of the rise in accusations of greenwashing or climate-washing is the related phenomenon of 'green hushing', where companies seek to hide their climate strategies from wider scrutiny.5 A report by consultancy firm South Pole found that nearly a quarter (23%) of 1200 "sustainability-minded organisations" surveyed about their "science-aligned climate targets" had decided not to publish details of their plans.6 This highlights the sense of nervousness felt by some business leaders around the potential downside of climate change commitments.

Environmental risk sentiment shifts

As our 2023 Risk & Resilience research shows, environmental risks - which includes climate change and associated catastrophe risks, environmental damage, pandemic, greenhouse gas emission, and energy transition risk – has become a key risk cluster for business leaders.

The percentage of global business leaders who ranked this group of risks first doubled, from 12% of those surveyed in 2021, to 24% in 2023, and they predict it will become their greatest area of concern (26%) in 12 months time. This is likely due, in no small part, to a growing pressure being put on corporate clients by external stakeholders to focus on environmental risks.

Awareness of environmental issues and actions to mitigate their impact are not the only things companies need to think about in terms of becoming more resilient to this set of risks. According to research by the Bank of England's (BOE's) 2021 Climate Biennial Exploratory Scenario (CBES) published in May 2022,7 many financial institutions (including insurers) are currently ill-prepared for the challenge of climate-related litigation. Equally, our research found that smaller businesses feel the least well-equipped to mitigate the potential impacts of climate change. A quarter of businesses (25%) globally feel unprepared for the impact of climate change with small and medium-sized businesses feeling the least resilient (28% versus 22% with revenue over £100m).

The BOE launched an exercise on climate litigation as part of the CBES, in which participants were asked to consider seven hypothetical legal cases to explore possible exposures to the London insurance market from climate-related litigation.

The researchers found that Directors' and Officers' liability (D&O) policies were seen as the most likely to be exposed to climate-related litigation, particularly with regard to three of the hypothetical cases - greenwashing, breach of fiduciary duty and indirect financing of carbon emissions.

Meanwhile, climate-related financial disclosures, as outlined by the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD), became a mandatory requirement in the UK for publicly quoted companies and larger privately-owned firms, as of April last year,8 and the expectation is that over the next few years, this obligation will be extended to include more companies. Whilst this requirement is likely to focus the minds of business leaders on the environmental risks their organisations face, the increased scrutiny on those disclosures could also heighten the risk of potential litigation.

With so much external focus on environmental risks, we feel it is important to support clients who are actively managing ESG risks. Through introducing a pioneering ESG syndicate that focuses exclusively on offering additional capacity to businesses that perform well against ESG metrics, we hope to highlight what the insurance industry can offer to its customers to help them manage environmental risks and the potentially costly implications of greenwashing and other climate-related litigation.

Carl Puttock

Underwriter - International Management Liability

1 New figures show climate litigation is growing risk to fossil fuel industry and other companies | Grantham Research Institute
2 Climate-Washing Litigation: Legal Liability for Misleading Climate Communications | Climate Social Science Network
3 Italy's first greenwashing case between corporates | Clifford Chance
4 Green hushing' on the rise as companies keep climate plans from scrutiny | Financial Times
5 Net Zero and Beyond: A Deep-dive on Climate Leaders and What's Driving Them | South Pole
6 Results of the 2021 Climate Biennial Exploratory Scenario | Bank of England
7 Climate-related financial disclosures for companies and limited liability partnerships | gov.uk
8 Syndicate 4321 supporting clients to transition | Beazley