Climate change litigation: A global snapshot

Global climate change litigation* and laws**

*Numbers indicate climate change cases as of 2018
**Colours indicate climate change laws and policies as of 2018

Legal issues for climate change litigation

Standing
Greenhouse gas emissions mingle with other emissions to cumulatively cause climate change effects. Impacts may result from numerous factors and it may be difficult to pinpoint emissions as the cause. Claimants may have difficulty demonstrating that they have sufficient connection, and have suffered, as a result.

Causation
Climate science is rapidly developing and improving, but it remains difficult to pinpoint the effects of particular emissions and connect them to a specific event or damage. Demonstrating a direct link between actions (such as emissions from operations) and specific climate change-related harm is essential for claimants to prove causation.

Justiciability
Many courts have ruled that climate change is a political or global policy issue and therefore inappropriate to address in a lawsuit. Recently, some courts have started to accept that issues related to climate change can be considered.

Apportionment
Although there may be sufficient evidence to prove causation in a particular case, the question of how to attribute or apportion liability to a particular state, company or individual remains a significant issue for climate change litigation.

Types of claims and actions

Public and private nuisance
Claim for damages by New York City against four oil & gas companies for protection against climate change impacts and adaptation

Rights-based claims
Juliana human rights claim against the US government for failing to take action against climate change and violating constitutional rights to life and liberty of the younger generation

Failure to warn
County of Santa Cruz claim against an oil company alleging injuries to the city and county from production, promotion and marketing of products, along with concealment of known hazards and ‘championing of anti-regulation and anti-science campaigns’

Company and financial risks
Climate change-related actions under company and financial regulation have included shareholder action for example, alleging breach of company law where annual reports fail to disclose climate change-related business risks

Constitutional claims
Urgenda claim against the Dutch government for breach of constitutional duty to protect its citizens from climate change, requiring more ambitious action to reduce domestic carbon emissions

Fraud and consumer protection
Lawsuits against Volkswagen in respect of green advertising and claims of carbon neutrality relating to diesel emissions from vehicles, and the use of ‘defeat devices’ for emissions standards tests

Shareholder activism
Companies may face shareholder activism and pressure to disclose climate change-related risks to their businesses

Planning and permitting
Regulatory processes for permitting and renewal at local government levels are putting greater emphasis on future carbon emissions of proposed projects or activities, and planning decisions are increasingly including climate change adaptation and mitigation factors

Challenges to climate legislation and policy
Increasingly, claims are being brought against governments challenging development, application and enforcement of new climate change legislation and policies

Climate change is giving rise to a new class of litigation driven by government policy, investors and the public

Sources: United Nations Environment Programme, Grantham Research Institute on Climate Change and the Environment and Sabin Center for Climate Change Law

Climate change litigation: A new class of action