

Climate Lawsuits as a Social Corrective: How Companies Underestimate the Financial Risk of Climate Litigation

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It is estimated that over [€10 billion in damage](#) was caused by the floods in Spain in 2024 and an estimated [\\$500 billion in total damage and economic loss](#) in the U.S. following the 2024 Atlantic hurricane season.

These figures can only hint at the enormous human hardships brought about by severe weather events - events whose severity and likelihood [are increased](#) due to climate change. However, these figures illustrate what companies and the financial sector are finally starting to feel: the climate crisis poses immense economic and financial risks.

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And yet it remains largely unclear and undebated, at least explicitly, who will have to shoulder these risks. If the legal and political status quo remains unchallenged, most of these [risks and costs](#) will fall onto the [general public](#). This is where litigation can play a vital role. Climate-related disasters, their increased probability and the inaction of politicians and businesses are increasingly triggering lawsuits against those who are perceived to be causing the climate crisis.

This piece shows how climate litigation is being used by civil society organisations as a necessary social corrective tool to reduce and redistribute climate-related financial risks as well as the resulting costs.

What are climate-related financial risks?

Climate-related financial risks can arise for companies both from the physical impacts of the climate crisis as well as from the societal shift towards a climate-neutral future. The widely applied [climate risk reporting system of the Taskforce on Climate-Related Financial Disclosures](#) (TCFD) therefore assumes two categories of financial climate risks for companies: physical risks and transition risks (see Figure 1).

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Figure 1 (TCFD)

Physical risks include, for example, damage to infrastructure or companies' supply chains due to forest fires and floods. Transition risks include risks that arise as a result of the transition to a climate-resilient economy, e.g. stricter climate protection laws, the shift of companies to new technologies or the effects of carbon pricing on production costs. Transition risks can lead to assets becoming stranded, meaning a severe or complete loss of value, e.g. when coal-fired power plants are shut down because of climate protection measures. The liability and litigation risks to be discussed here are typically included in the category of transition risks.

How are these risks managed?

Many companies, particularly in the financial sector, are now integrating climate impacts into their risk management frameworks. However, they tend to focus (albeit far from comprehensively) on physical and political risks. Climate litigation risks seem to be treated only as a marginal issue: recent corporate reports from [Deutsche Bank](#), [Volkswagen](#) and [Munich Re](#) suggest that climate litigation risks have so far only been systematically considered in isolated cases.

Meanwhile, [academics](#) and supervisory bodies — including [European Central Bank officials](#) and a [coalition of climate-engaged central banks](#) — express concern over the insufficient recognition of climate litigation and its financial implications, arguing that?

climate litigation is significantly underestimated?in [terms of its scope](#) and [ramifications](#).

In addition to direct litigation costs, defendant companies are likely to incur significant indirect costs, particularly through reputational damage. [Pioneering quantitative analyses](#) by the LSE show that an unfavourable ruling for the company or even just the filing of a climate lawsuit can lower firm value on stock markets by an average of 0.41% (compared to the expected value). Furthermore, legal expenses for climate litigation are generally found to exceed those associated with conventional litigation.

What are climate litigation risks, and why are they underestimated?

The assessment of financial climate litigation risks [should go beyond](#) estimating the legal fees, fines and direct reputational damage that may be incurred by a defendant company. The possibility of increased insurance costs must also be considered: insurance companies can modify their coverage conditions and/or increase premiums for particularly risk-exposed companies in response to climate-related claims (or the perception of an increased risk of climate-related claims). Similarly, defendant companies may also face increased financing costs through impaired creditworthiness. This may occur if creditors assess a company's climate litigation risk exposure to be so high that it causes them to adjust their contractual conditions and demand higher interest payments. Investors may also reconsider their existing investments (e.g. the highlighted losses in stock market value) or even support [derivative climate liability lawsuits themselves](#). The mere fact that a [company belongs to a sector](#) that is already or expected to be frequently targeted with climate lawsuits (e.g. the energy sector) can already lead financiers and insurers to re-evaluate their contractual relationship and dealings with that company. Depending on the outcome of the respective proceedings, some climate lawsuits could challenge [entire business models](#) or establish liability for entire industries or [particularly emission-intensive companies](#) beyond the individual proceedings.

Moreover, the case of financial institutions shows how climate litigation risks can also [affect third parties](#) only indirectly affiliated with the defendant company.

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Figure 2 ([Solana](#))

As such, a financial institution's [own credit risk](#) may be affected if its clients are targeted by climate litigation and their solvency is subsequently impaired. Reputational damage and associated costs could spill over to the respective financial institutions due to the financial connection to the defendant. This connection could also result in increased insurance and financing costs for the financial institution. In addition, the financial relationship with companies exposed to climate litigation risks (typically because of their emissions-intensive activities) can lead to financial institutions themselves [facing climate litigation](#) due to their financing of emissions.

While some financial sector actors appear to be [at least becoming partially aware](#) of the wider implications of climate risks, most current climate risk management approaches underestimate the importance of the legal dimension.

Meanwhile, civil society organisations are well aware of these potentially far-reaching effects and are using climate litigation as a powerful lever for change.

Climate litigation as a lever for civil society

In the face of [glaring climate protection deficits](#) and long-standing [enforcement deficits in environmental law](#), climate litigation can be a legitimate tool in the pursuit of climate and environmental protection and has become an integral part of civil society efforts. Climate litigation is also gaining in popularity because the costs of the climate crisis have so far primarily been borne by the general public. Against this backdrop, climate litigation can act as a corrective: on the one hand, it can drive stronger and earlier climate change mitigation and adaptation measures and thereby sustainably reduce climate-related financial risks for the general public. On the other hand, it can be used as a risk and cost redistribution instrument serving greater climate justice.

Climate lawsuits as a corrective: (1) strengthening, enforcing and specifying climate obligations

To begin with, climate litigation can bring about more ambitious climate policies - just consider the *Neubauer ruling* in which the German State was ordered to enact considerably more ambitious climate legislation and emissions reduction goals. Climate litigation can also [enforce the adoption and implementation](#) of already established climate policies. Furthermore, it can substantiate and concretise high-level climate policies for private actors and impose obligations to act, as demonstrated by a Dutch court in the [lawsuit against the fossil fuel giant Shell](#). Though the appeal court partially [overturned the judgment](#) and repealed the precise emissions reduction target imposed, the company's fundamental obligation to reduce emissions was confirmed. By

seeking bolder climate action of governments and companies, civil society climate lawsuits have the potential to reduce the risks and costs of climate impacts for the common good (see Figure 3). After all, the costs of inadequate climate protection are estimated to be much higher than the costs of the climate action required to mitigate global warming.

Furthermore, climate litigation can reduce transition risks for companies and, above all, make them more visible. Climate litigation risks can encourage companies to implement climate protection and transformation measures that would ultimately be inevitable due to regulatory requirements. It also demonstrates that companies' swift transition is the only sensible form of climate risk management. After all, if climate lawsuits result in stronger climate policies or ensure their implementation, they can intensify other transition risks (e.g. regulatory) and accelerate their materialisation which can accelerate the stranding of assets and thus the emergence of associated costs for companies.

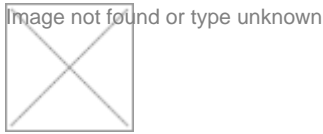


Figure 3

Climate lawsuits as a corrective: (2) redistribution of climate risks and costs

Climate litigation also has a strong potential for redistribution. It can redistribute existing risks and thus reallocate future or already materialised costs of climate impacts between different actors. The legal system offers a platform for risk and cost distribution which civil society organisations, companies and the State can utilise via climate lawsuits as (re)distribution instruments (see Figure 4). Through redistribution, the respective actors can thus also reduce the risks and costs they bear themselves.

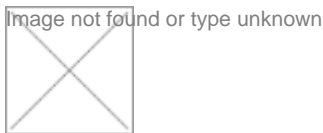


Figure 4

A straightforward example of this possible risk distribution is the increase in cases concerning contractual (climate) risk and cost transfers, e.g., in the context of insurance contracts. One early and illustrative case concerned the transfer of litigation-related costs arising from climate lawsuits. In that instance, a fossil fuel company targeted by climate litigation sought to recover the litigation costs from its insurer, only to sue the insurer itself upon its refusal to cover the costs. Ultimately, the court ruled in favour of the insurance company and thus barred the fossil fuel company from passing the costs of the climate lawsuit on to its insurer.

In a similar way, civil society actors could redistribute climate-related risks and costs via climate litigation and return these to the emissions-intensive companies who externalised them to begin with. Probably the most vivid example of this is the case brought in Germany by a Peruvian plaintiff against the energy company RWE. The action was initially dismissed but is currently pending in the second instance court, which has found the arguments sufficiently convincing to justify progressing to the stage of considering initial evidence and holding oral hearings (with the court decision expected in May 2025). If the plaintiff is successful, the lawsuit would effectively shift some of the climate-related risks previously passed on by RWE to the (global) public back onto the corporation, forcing it to partly internalise its climate-related externalities. Though President Trump's recent executive order intervening in climate law and lawsuits added uncertainty, several similarly motivated lawsuits in the US could result in fossil fuel conglomerates having to answer financially for covering up their climate impacts for decades as well as for their efforts to delay climate action.

This would allow the risks and costs associated with the climate crisis (and the ongoing lack of climate action) to be passed back to the original polluters. The RWE case shows how climate litigation could not only represent a corrective within a country, but could also be used to address the (in)justice dimension of the climate crisis on a global level: the global South is the most affected by the impacts of the climate crisis, while the historical emissions were mainly caused by companies and countries from the global North.

Climate lawsuits as a corrective: (3) climate action now and everywhere

Climate litigation can help overcome the so-called 'tragedy of the time horizon' of climate change and its transnational nature. It has the potential to improve climate policies, largely by harnessing the threat of serious financial risks to force action from high-emissions companies. carbon-intensive business models remain profitable as long as their impact on people and the environment can be externalised geographically and temporally due to the slow-onset character of many climate impacts. Climate litigation can drag some of these costs into the present day — right to companies' doorsteps — and force firms to internalise at least part of them. Climate litigation should therefore be seen as an urgently needed social corrective in the face of climate action deficits of political and economic actors - even if it remains only part of the solution.

Climate litigation by companies as a short-sighted/short-lived treatment of symptoms

At the same time, companies are also increasingly initiating climate-related legal actions themselves. In doing so, they can also take advantage of the risk-reduction effects of climate litigation outlined above and temporarily reduce their risk exposure. Two types of claims illustrate this:

Firstly, companies can directly reduce their climate-related transition risk exposure, albeit only superficially and temporarily, via targeted 'anti-regulatory' climate lawsuits to block or weaken climate-related regulation. The numerous lawsuits against the US Securities and Exchange Commission's (SEC) new climate disclosure rules - whose implementation was subsequently paused and ultimately dropped altogether, illustrate this point. Such lawsuits can be used to reduce various transition risks, including climate litigation risk itself, by blocking potential new legal bases for future litigation. Another poignant example of 'anti-regulatory'-litigation is investor-State dispute settlement (ISDS) proceedings. They allow investors to shift costs incurred through government measures onto the regulating State. For instance, investors have used ISDS to claim compensation for losses such as coal plant devaluations resulting from fossil fuel phase-out policies. The mere threat of claims involving immense sums - like RWE's €1.4bn case against the Netherlands - and lengthy proceedings is a means of exerting pressure against ambitious climate policies. Such legal actions are expected to increase and are often seen as a deterrent to ambitious environmental regulation.

The second category of cases concerns Strategic Lawsuits against Public Participation (SLAPPs), which aim to silence and burden civil society actors through costly, time-consuming litigation. These lawsuits can drain scarce resources and even threaten the survival of organisations. It is hardly surprising that organisations active in climate litigation are frequent targets of SLAPPs by companies that are themselves exposed to climate litigation. The recent jury verdict in North Dakota holding Greenpeace liable for \$667 million in a lawsuit by Energy Transfer (the fossil fuel company developing the Dakota Access pipeline) regarding pipeline-related protests serves as a recent example. To counter this claim, Greenpeace is now using in the Netherlands the EU's new Anti-SLAPP Directive, which allows for evidently baseless claims to be dismissed more quickly and enables cost recovery from plaintiffs through 'counter-SLAPPs'.

Tackling root causes instead of treating symptoms

Evidently, engaging offensively in climate litigation cannot alleviate the exposure of companies to physical climate risks. Instead, it could exacerbate their exposure. By (mis)allocating resources towards these proceedings, companies could miss windows of opportunity for necessary transition and adaptation measures. Additionally, the physical impacts of climate change would ultimately hit them even harder due to weak governmental climate action. A short-term reduction of transition risks as a symptomatic treatment could therefore prove to be much more costly for companies - but also for society at large.

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In light of escalating climate impacts and the inadequate response by governments and businesses, climate litigation will continue to be used as an instrument for risk reduction and (re-)distribution. The associated financial risks will therefore increasingly have to be on the agenda. By now, the extent and breadth of climate-related financial risks should make clear that there is no alternative to adapting unsustainable business models. Companies must comprehensively price in all climate-related risks - including climate litigation risks. Anything else remains a short-term, symptomatic treatment and does not address, let alone cure, the root causes of the climate crisis.

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URL: <https://www.biicl.org/blog/105/climate-lawsuits-as-a-social-corrective-how-companies-underestimate-the-financial-risk-of-climate-litigation>
