Sturm College of Law
UNIVERSITY OF DENVER

The Ved Nanda Center for International & Comparative Law
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CORPORATE CLIMATE LIABILITY

COMPARATIVE LEGAL INSIGHTS

ABSTRACTS

FRIDAY SEPTEMBER 25, 2026

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WORKSHOP - SEPTEMBER 25, 2026

ABSTRACTS

The Hon. Justice Brian J PRESTON
AO FRSN SC, Chief Judge of the Land and Environment Court of New South Wales (Australia)

KEYNOTE ADDRESS

Achieving corporate accountability for climate action through climate litigation

Climate litigation mostly has been and still is being brought against governments to hold them accountable for inaction or inadequate action to mitigate the causes or adapt to the consequences of climate change. Governments set the legal and policy levers that encourage or discourage climate action. But corporations pull and push those levers, increasing or decreasing greenhouse gas emissions contributing to climate change. Climate litigation has pivoted, therefore, to hold corporations accountable for their climate inaction or inadequate action.

My address will be in three parts. First, I will highlight the need for corporate accountability and the types of climate obligations of corporations. Secondly, I will provide an overview of climate litigation against corporations which aims to influence corporate behaviour either directly or indirectly. Thirdly, I will explain five types of climate litigation seeking to hold corporations accountable, illustrating each type with case examples. These involve corporate accountability for high-emitting projects, carbon-intensive business, climate-related risks, supply and value chains and climate-related greenwashing. The courts' adjudication of corporate climate litigation can facilitate the achievement of effective corporate climate action.

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Climate Litigation, Banks and Money: Towards a New Trend

A new and significant trend is emerging in climate litigation: the strategic targeting of banks, financial institutions, and monetary actors to influence both economic policy and the flow of capital in alignment with climate goals. This paper frames this trend within climate law as a transformative and interdisciplinary field, asking how legal frameworks can make capital allocation decisions accountable to core planetary boundaries (climate change and biodiversity loss) and to social foundations such as human rights, justice, democracy, and good governance. This paper aims to analyse this evolving strand of litigation, with particular focus on recent cases brought against banks and central institutions. Through this analysis, the paper seeks to explore the deeper relationship between legal process, banking activity, and monetary governance in the context of the climate crisis. In doing so, it highlights how these disputes cut across regulatory "silos" (climate law, financial regulation, corporate governance, and EU public law), addressing fragmentation and path-dependent patterns that hinder coherent sustainability-oriented regulation.
Notable cases demonstrate the growing importance of this trend. In Notre Affaire à Tous, Les Amis de la Terre, and Oxfam France v. BNP Paribas, claimants argue that BNP Paribas violated France's Duty of Vigilance Law and other legal obligations by financing fossil fuel expansion, seeking an immediate cessation of such financial support. The case marks the first direct climate-related lawsuit against a bank in France.

In ClientEarth v. Belgian National Bank, the challenge concerned the Bank's participation in the European Central Bank's Corporate Sector Purchase Programme (CSPP), alleging non-compliance with EU environmental and human rights obligations in bond purchasing decisions – thus questioning the monetary policy's alignment with EU climate commitments. This case also raises core questions about governance and power dynamics in sustainability transitions: who sets the criteria for "eligible" economic activity, and how should accountability operate when rights impacts follow from seemingly technical monetary choices?

Similarly, Cases C-212/21P, C-223/21P (EIB and Commission v. ClientEarth) before the Court of Justice of the EU established a precedent for NGO scrutiny over the European Investment Bank's financing decisions under environmental law. From a justice perspective, these cases prompt reflection on how a finance-driven transition distributes costs and benefits across sectors.
Through a reading of these cases, their procedural frameworks, the litigation frictions they reveal (standing, causation, proof, and remedies), and their concrete outcomes, the paper argues that climate litigation is entering a new phase – one in which legal action increasingly seeks to reshape not only corporate behavior but also the architecture of financial markets and monetary governance. The study will thus contribute to understanding the systemic interactions between sustainability law, banking, and money.

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Corporate Climate Liability and Strategic Litigation Against Public Participation in the Energy Transfer-Greenpeace Cases Arising from Opposition to the Dakota Access Pipeline

As corporate actors face increasing exposure to climate-related liability and financial accountability, strategic litigation has emerged as a key site of contestation. This paper examines the transnational battle between Energy Transfer (ET) and Greenpeace entities, arising from the advocacy linked to Indigenous-led opposition to the Dakota Access Pipeline (DAPL). These cases are situated within the broader architecture of corporate climate liability and political economy of extractivism. The #NoDAPL mobilization at Standing Rock Sioux Tribe reservation (2016-2017), represented one of the largest global gatherings of Indigenous Peoples in this lifetime, centered on sovereignty, water, and the existential threat posed by fossil fuels. The protests were met with excessive force from law enforcement and private security hired by ET. Advocacy efforts, which highlighted evidence of the excessive force and destruction of sacred cultural sites and burial grounds, were part of wider advocacy4 campaigns contributing to pressure on institutions financing DAPL. In response, ET initiated defamation and racketeering claims against Greenpeace entities. In 2019, after federal claims were dismissed with prejudice, ET pursued state-level litigation in North Dakota, a jurisdiction lacking anti-SLAPP protections, culminating in 2025 in an 18-day jury trial and verdict awarding hundreds of millions of dollars in damages.5 The proceedings were emblematic of the chilling effect that corporate claims can have on environmental and climate advocacy.
Concurrently, Greenpeace International, based in the Netherlands, initiated proceedings in a Dutch court under the recent European Union (EU) Anti-SLAPP Directive. The Directive seeks to protect civil society in EU member states from manifestly unfounded claims or abusive proceedings in civil courts, including in third countries. Under the Directive, if the Dutch court finds that ET's lawsuit amounts to a 'disproportionate, excessive or unreasonable claim' due to the 'excessive dispute value', and that the judgment is manifestly unjust, it could deny the recognition and enforcement of the ET SLAPP judgment against Greenpeace International.

The still-unfolding Energy Transfer v Greenpeace and Greenpeace International v Energy Transfer litigation illustrates an emerging dialectic between corporate use of strategic lawsuits to deter climate accountability advocacy and evolving international frameworks designed to protect civic space. Through comparative analysis of U.S. state litigation, the absence of federal anti-SLAPP uniformity, and the EU's developing anti-SLAPP framework, this paper examines how jurisdictional fragmentation shapes corporate climate governance and the impact of these cases for advocates attempting to advance corporate accountability for environmental and climate damage.

More broadly, this article contends that SLAPP and anti-SLAPP regimes are becoming consequential components of the climate liability landscape. As corporations face increasing climate-related exposure, including investor-driven ESG scrutiny, human rights-based claims, and evolving international human rights and business governance standards, strategic litigation may serve as a risk management strategy aimed at insulating extractive industries from financial and reputational constraints.

Drawing on environmental law, international human rights law, and comparative corporate accountability frameworks, this paper situates these cases within global struggles over water, Indigenous rights, and extractive industry governance. We assess whether anti-SLAPP mechanisms can meaningfully recalibrate the balance between corporate defendants and climate accountability advocates, and what this signals for the future of transnational corporate climate liability.

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Strategic Climate Litigation against Major Corporate Emitters in Europe: Filling the Regulatory Gap?

Compliance with regulatory frameworks is frequently invoked as a defence in civil litigation, particularly in areas characterised by dense regulatory frameworks such as environmental and product-related harms. This paper examines how different jurisdictions in Europe receive and operationalise the regulatory compliance argument (sometimes called the 'permit defence') in civil liability cases, and what this reveals about the interaction between public regulatory powers and private law adjudication. The central research question is how regulatory frameworks shape, constrain, or transform private law liability—and, conversely, how private law litigation feeds back into the evolution, critique, and recalibration of regulatory governance.

The paper first situates the regulatory compliance argument within the development of environmental tort law and related case law, including case law of the European Court of Justice (ECJ) under the EU Environmental Liability Directive. Drawing on regulatory theory and accounts of regulatory failure, it distinguishes between macro-level regulatory breakdowns and more focused sectoral failures (such as asbestos or medical devices), arguing that diffuse and polycentric risks—exemplified by climate-related harms—challenge assumptions of regulatory completeness and sufficiency. In such contexts, regulatory compliance cannot function as a categorical shield against liability without foreclosing meaningful legal protection for affected individuals against climate harms.

The core comparative section analyses how selected European jurisdictions (Germany, France, Switzerland, and the Netherlands) address regulatory compliance in tort law, focusing on doctrinal techniques used to identify and mediate overlap between public regulation and private claims. It examines questions of regulatory exemption, constitutional adequacy, the alignment between regulatory objectives and individual interests, and the extent to which civil courts defer to or critically reassess parliamentary balancing embedded in regulatory schemes. The comparative analysis seeks to identify both how these four jurisdictions resolve these questions in common and differentiated manners.

Finally, the paper explores the dynamic interaction between private and public law. It argues that private law courts are often compelled to engage, explicitly or implicitly, with the adequacy of regulatory frameworks due to the individualized nature of tort claims. This interaction becomes particularly salient where human rights considerations are implicated, underscoring the role of private law litigation as both a corrective mechanism for regulatory gaps and a driver of regulatory evolution.

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A Comparative Study of Plausibility of Greenwashing Litigation under Voluntary ESG and Climate-Related Disclosure Frameworks

There has been an upsurge in voluntary frameworks for environmental, social, governance (ESG) and by extension, climate related disclosure frameworks. This includes among others, the Task Force on Climate-related Financial Disclosures, the Global Reporting Initiative etcetera. While this is linked with proliferation of knowledge and internalisation of standards by corporations, it has also become the mechanism through which they corroborate their carbon mitigation/neutrality claims. Now, the voluntary nature of the abovementioned frameworks poses a significantly complex legal question. Whether corporations which acknowledge and publicly claim to adhere by any of such voluntary framework and thereafter, claim carbon neutrality based on such framework be legally sued for greenwashing if such a claim remains untrue or misrepresented? This legal conundrum is still lacking a cohesive treatment across jurisdictions and remains unanswered in India, which has now shifted to the ESG Business Responsibility and Sustainability Reporting framework/BRSR framework (mandatory for certain corporations and voluntary for the others).

The researchers argue that the adoption of such voluntary mechanisms to support their carbon neutral claims establishes a legally enforceable act which has started gaining traction under the current regulatory landscape including in consumer protection laws, antitrust laws and securities regulations. The arguments of the researchers are three-fold. First, through a comparative analysis of European Union (specifically, Green Claims and the Sustainability Reporting Directive), Australia, the UK and the USA, the researchers exhibit the willingness of judicial and regulatory bodies to penetrate the voluntary nature of the ESG mechanisms to examine the veracity of the carbon neutral claims made under their ambit.

Secondly, the researchers scrutinize how such regulatory and judicial conjunction is shaping a niche doctrine of framework-led obligation wherein specifics such as prominence, intended stakeholders and the like assist in determining liability of corporations notwithstanding the non-binding or voluntary nature of the ESG/climate-disclosure framework. Lastly, and arguably the most important prong of the arguments of the researchers as it focuses on highlighting how the present Indian BRSR framework lacks the means to convert inaccurate claims into legally actionable cause of action inevitably leaving the concerned stakeholders without an effective mechanism of grievance redressed which other jurisdictions have already commenced to develop.

By placing reliance on the Indian Competition Commission unfair trade jurisdiction, the Consumer Protection Act, 2019 and Securities and Exchange Board of India (SEBI, the researchers conclude by suggesting a doctrinal pathway for legal scrutiny of voluntary framework-led climate neutral claims. The researchers believe that such a mechanism will be contributing to the global academic and related discussions on the legal intensification of voluntary ESG pledges while also providing for an India specific architecture to sustain the urgent necessities to strengthen India's capital markets with globally environmentally conscious investors.

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Fiduciary Climate Duties: Emerging Pathways for Corporate and Financial Accountability

The submission examines whether fiduciary duties can serve as a legal basis to hold corporations, financial institutions, and their directors accountable for failing to align their conduct with climate-related obligations. The central research question is: Can fiduciary duties be judicially reframed to encompass duties of climate risk management? Building on emerging litigation trends, and despite geopolitical tensions and ESG backlash, the submission argues that fiduciary duties are evolving to bridge corporate governance and climate accountability.

Recent cases suggest that failure to address foreseeable climate risks may constitute a breach of fiduciary duties. Plaintiffs argue that directors and financial decision-makers must integrate transition risks into strategy, investment decisions, and oversight. This trend is visible, with varying success, across jurisdictions. In the United Kingdom, ClientEarth v. Shell Board of Directors argued that Shell's directors breached their statutory duties by failing to adopt a Paris-aligned strategy and by mismanaging climate risks. Also in the UK, Butler-Sloss v. Charity Commission confirmed that fiduciary discretion may incorporate climate considerations. In Australia, McVeigh v. REST advanced the argument that pension trustees' fiduciary duties include managing climate-related financial risks. In South Korea, Kim Min et al. v. National Pension Service saw pension holders bring a civil 1claim against the National Pension Service for failing to implement its coal phase-out policy; the case was dismissed after the court characterized the policy as non-binding. In the United States, Ramirez v. Exxon Mobil Corp involved allegations that directors failed to integrate climate risks into governance, threatening long-term value.

In the Global South, Conectas v. BNDES and BNDESPAR, filed by Conectas Direitos Humanos against BNDES and its investment arm BNDESPAR, is the first climate lawsuit in the world brought against a development bank. It argues that fiduciary obligations in managing public financial resources must include aligning investments with emissions reduction objectives and the Brazilian NDC. Under a lens of double materiality, it contends that allocation of public finance, particularly under conditions more favorable than market terms, must maximize sustainable development outcomes. The claim maintains that BNDESPAR invests public resources while holding equity in carbon-intensive sectors, requiring effective and transparent climate risk management. The global relevance of the case is underscored in United Nations General Assembly Note A/78/255 on the Promotion and protection of human rights in the context of climate change,2 which cites the Brazilian lawsuit to illustrate that "banks have become the target of climate change litigation for funding projects that are not consistent with reducing greenhouse gas emissions."

The submission argues that fiduciary-duty-based climate litigation signals a broader shift, particularly as sustainability and ESG commitments evolve from voluntary frameworks into enforceable governance obligations. By embedding climate risk into the legal architecture of loyalty and prudence, courts may become pivotal actors in aligning capital allocation with the low-carbon transition.

James R. MAY

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De-chartering Carbon Majors in Delaware

This contribution would explore the idea of revoking corporate charters for carbon majors. Only 100 "carbon majors" have been the source of more than 70% of the world's greenhouse gas emissions since 1988, with the top 20 contributing 35% of all global fossil fuel emissions since 1965. Despite early knowledge that their products would destabilize the global climate, carbon majors not only expanded production but funded misinformation campaigns, and actively obstructed legislative reforms. Carbon majors have engaged in corporate strategies over the past seven decades that "are driving a multitude of interlinked crisis that jeopardize the breadth and stability of life on Earth." These man-made disasters include the warming climate crisis, public health harms, environmental injustice, biodiversity loss, petrochemical pollution and industry disinformation. This strategy aimed to externalize the costs of climate damage while maximizing profits.

The nationwide litigation brought against these corporations by states, counties, cities and tribal nations due to the industry's deceptive and destructive practices underscores the necessity to provide accountability to the corporate exploitation of the Earth for their bottom-line profits. Yet no case aims to de-charter carbon majors, something explored here.

Delaware law protects carbon majors. All of the top U.S. carbon majors are either themselves Delaware corporations or use Delaware subsidiaries. Yet corporate privileges are not boundless. The Delaware Constitution and Statutory Code both grant the Delaware Attorney General the power to revoke the corporate charters of entities that have "abused or misused corporate powers, privileges, or franchises." The Constitution provides that "[a]ny proceeding for such revocation or forfeiture, shall be taken by the Attorney-General, as may be provided by law." The Delaware General Corporation Law grants the Attorney General's statutory power to seek the revocation or forfeiture, reviewable by the Delaware Court of Chancery.

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Beyond Courts? Corporate Climate Liability and Access to Remedy in the Global South

Corporate climate litigation has increasingly sought to hold corporations accountable for their contributions to climate change. Landmark decisions have emerged from courts in the Global North, particularly in Europe and North America, leading scholars and practitioners to believe that judicial litigation is the primary path to ensuring corporate climate liability. While judicial decisions are paramount for securing binding remedies, this court-centered perspective overlooks quasi-judicial grievance mechanisms like National Human Rights Institutions (NHRIs) that make such litigation possible, especially in Global South jurisdictions, where legal and practical barriers frequently limit direct access to courts.

This paper argues that corporate climate accountability in the Global South is not produced by courts alone but develops through a complementary institutional framework, in which NHRIs enable and strengthen judicial enforcement. Drawing on a comparative analysis of the National Human Rights Commission of Nepal and the National Human Rights Commission of Thailand, the paper examines how these institutions facilitate access to remedy despite the legally non-binding nature of their recommendations. Through their quasi-judicial mandates of complaint handling and investigations, alternative dispute resolution mechanisms, and public reporting, these NHRIs help establish factual basis of the claims, and recognize corporate-related human rights and international environmental harms within applicable international laws.

Based on the UN Guiding Principles on Business and Human Rights (UNGPs), particularly the provisions concerning access to remedy, the paper explores how NHRIs help victims seek remedies for corporate human rights abuses by interacting with courts in the context where direct climate litigation remains difficult. In practice, NHRIs function as the catalytic accountability mechanisms that translate soft laws, including UNGPs, into claims that can be adjudicated through the court system. Thus, rather than replacing courts, NHRIs help bridge the gap between normative commitments and enforceable legal outcomes by enabling victims to access judicial remedies more efficiently and effectively.

By highlighting experiences from the Global South, the paper challenges the assumption that courts are the only meaningful avenue for corporate climate accountability. It argues instead that effective remedies often emerge from institutional interaction and cooperation between the NHRIs and judiciary, where each performs complementary functions within the broader accountability process. In doing so, the paper contributes to the climate law scholarship by offering a practice-oriented understanding of how effective remedies are achieved in the jurisdictions where institutional collaboration is essential to overcoming structural barriers to corporate accountability. The analysis further suggests that future approaches to corporate climate governance should consider not only judicial developments but also the broader institutional grievance mechanisms that enable access to justice across diverse legal contexts.

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Corporate Climate Litigation in East Asia: Civil Law Heritage and Environmental Law Pathways

This paper examines corporate climate liability in East Asia from a comparative perspective. It situates key cases from South Korea, China, and Japan within dominant European climate litigation narratives that emphasise loss and damage, human rights, and governance-based approaches, as well as within the shared heritage of the civil law tradition. Although German civil law strongly influenced Japan, and Japan in turn influenced the civil law frameworks of China and South Korea, contemporary climate litigation in the region displays divergence rather than convergence. The central argument is that corporate climate liability is shaped less by inherited civil law form than by the availability of a legitimate normative foundation capable of translating climate harm into legally cognisable responsibility.

This divergence can be explained through a doctrinal substitution mechanism that emerges from the cases in the three East Asian jurisdictions. Climate change is legally indeterminate, characterised by diffuse causation, long temporal horizons, and collective harm. Courts therefore require a normative foundation to render climate harm justiciable. In East Asia, the cases so far suggest that such a foundation can be drawn from only two sources: public environmental law, including principles, statutory duties, and regulatory obligations; or private law doctrines, such as personal rights, nuisance, and bodily integrity. East Asian jurisdictions diverge not at the level of civil law technique, but in terms of which normative foundation is available and institutionally legitimate.

East Asian cases follow a different trajectory. In South Korea, the farmers' lawsuit against the national electricity producer (Ma et al. v. KEPCO et al., Gwangju District Court) structures corporate climate liability through the polluter pays principle. This environmental law principle provides a stable basis for allocating proportional responsibility for climate harm, learning proportional-liability framing seen in the German Lliuya v. RWE and allowing loss and damage claims to proceed without requiring courts to construct novel climate tort duties. In China, the civil cases brought by Friends of Nature v. Gansu State Grid and Friends of Nature v. Ningxia State Grid similarly rely on traditional environmental law, notably through the environmental public interest litigation mechanism enabled by the amended Environmental Protection Law in 2015. Climate significance is translated into environmental pollution and regulatory non-compliance arising from coal-based power generation and failures to dispatch renewable energy, reinforcing statutory environmental obligations rather than creating new climate-specific causes of action.

Japan presents a contrasting model. Although Japan profoundly influenced civil law codes and doctrines across East Asia, it did not constitutionalise or strongly codify environmental rights. Environmental law as a rights-bearing field matured later and more unevenly in the region. As a result, in the Kobe coal power civil litigation (Citizens' Committee v. Kobe Steel Ltd. et al., Kobe District Court and Osaka High Court), plaintiffs rely on judicially developed personal rights (Jinkaku-Ken, 人格権) to frame climate risk as an infringement of health and peaceful living. Corporate climate liability therefore depends on private law improvisation rather than on formal environmental law.

These cases demonstrate that corporate climate liability in East Asia is determined not by shared civil law heritage, but by whether public environmental law provides an authoritative normative foundation for adjudicating climate harm involving corporates. Where such a foundation exists, as in South Korea and China, climate liability is absorbed into environmental law. Where it does not, as in Japan, courts must rely on private law substitution, producing a more fragile pathway for holding corporations accountable for climate change.

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Inter-Judicial Climate Governance and Corporate Conduct: The Influence of International and Human Rights Courts on Corporate Climate Obligations

In this paper, I examine how international courts and regional human rights tribunals shape corporate behavior regarding climate change mitigation and adaptation obligations. The main research question I seek to answer is "in what ways do international and human rights courts, which formally adjudicate state responsibility, nonetheless influence the climate-related conduct and governance practices of private corporations?"

The core argument I present is that these courts increasingly function as indirect regulators of corporate climate behavior by clarifying states' climate and human rights duties, articulating standards that are subsequently internalized by corporate actors through regulatory, contractual, and reputational channels. Methodologically, I employ a comparative case-study analysis of recent and pending climate-related proceedings before international and regional bodies, including human rights courts and treaty bodies, to trace how judicial and quasi-judicial reasoning on issues such as extraterritorial obligations, protection of vulnerable communities, and the right to a healthy environment reverberates within corporate governance frameworks. I situate this jurisprudence in dialogue with the UN Guiding Principles on Business and Human Rights and emerging soft-law standards on climate due diligence and disclosure.

In the course of the paper, I advance three key claims. First, international and human rights courts are progressively clarifying the content of state obligations in ways that generate derivative expectations for corporate actors, particularly regarding climate risk management, emissions reduction pathways, and remediation for climate-related harms. Second, these courts contribute to the construction of evidentiary and accountability standards that inform shareholder litigation, regulatory design, and voluntary corporate initiatives. Third, despite their growing influence, court-driven climate governance remains constrained by institutional mandates, enforcement limitations, and uneven uptake across jurisdictions and sectors. I conclude by proposing a typology of judicial mechanisms, which includes interpretive guidance, evidentiary standards, and remedial design, through which international and human rights courts can more effectively steer corporate climate conduct, and offers implications for future climate litigation and advocacy strategies.