

Climate Litigation as a Business Risk

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The physical effects of climate change, impending or existing regulations that impose a cost on carbon, and an altered competitive environment will affect nearly every public company worldwide. Businesses and their investors are beginning to awaken to the risks and opportunities posed by climate change. However, one important risk tends to receive less attention than others – the risk of climate change litigation.

Given the evidence connecting human use of fossil fuels to climate change, and perceiving a lack of meaningful political action to address global warming, environmental lawyers around the world began exploring litigation strategies. In the past few years, the idea of using litigation as a tool to address climate change has picked up steam, and climate change has started entering courts and tribunals around the world.

A review of these cases shows that some have been against governments, challenging the application or adequacy of government regulation; if and when successful, these suits necessitate regulatory changes and create new regulatory risks for carbon-intensive sectors. Other suits directly target industry, raising the question of who should bear the costs of combating and adapting to climate change – and posing obvious income statement and balance sheet risks for companies, since potential liability runs into the trillions of dollars.

With the trend of climate litigation increasing, businesses and their employees, particularly in carbon-intensive sectors, need to understand the nature of this risk and how it might affect them going forward.

Biography

Dave Grossman is the founder of Green Light Group, a consultancy firm specializing in environmental and energy research, writing, and strategy. Mr. Grossman has spent the past decade working in environmental development, law, organizing, politics, media, and policy. He has developed expertise with issues ranging from climate change and renewable energy to international environmental compliance, with perspectives drawn from domestic and international non-governmental organizations, state government, and political campaigns.

Previously, Mr. Grossman was a Staff Attorney with the Institute for Governance & Sustainable Development, managing projects for the International Network for Environmental Compliance and Enforcement (INECE).

Prior to that, he worked in the 2004 presidential campaign cycle, first on Howard Dean's innovative and precedent-setting campaign in the Democratic primary and then in the general election with Environment2004 (now Environmental Alliance) doing media outreach to women, sportsmen, and independent voters. He also served as a law clerk for the Chief Justice of the Alaska Supreme Court, did environmental law with Earthjustice and the Alaska Attorney General's Office, and was a grassroots organizer on endangered species issues with the National Audubon Society.

Mr. Grossman's publications include Warming Up to a Not-So-Radical Idea: Tort-Based Climate Change Litigation (Columbia Journal of Environmental Law, Vol. 28, p.1, 2003) and An Introduction to Theories of Why States and Firms Do (and Do Not) Comply with Law (7th INECE Conference Proceedings, Vol.1, 2005). He currently serves on the board of the National Association of Environmental Law Societies (NAELS).

He graduated summa cum laude from Princeton University with a degree in Politics and received his law degree from Yale Law School.