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Corporate defences in climate litigation: a comparative analysis of arguments and court responses

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Grantham Climate Litigation Guide 2

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About this guide

This guide is the second in the Grantham Climate Litigation Guides series. These guides are a collaboration between the Grantham Research Institute at LSE and the Grantham Institute at Imperial College London. The series is designed to provide informed guidance on the use of climate science and evidence in legal and policy contexts in concise, non-technical language. Further guides will be published in 2026.

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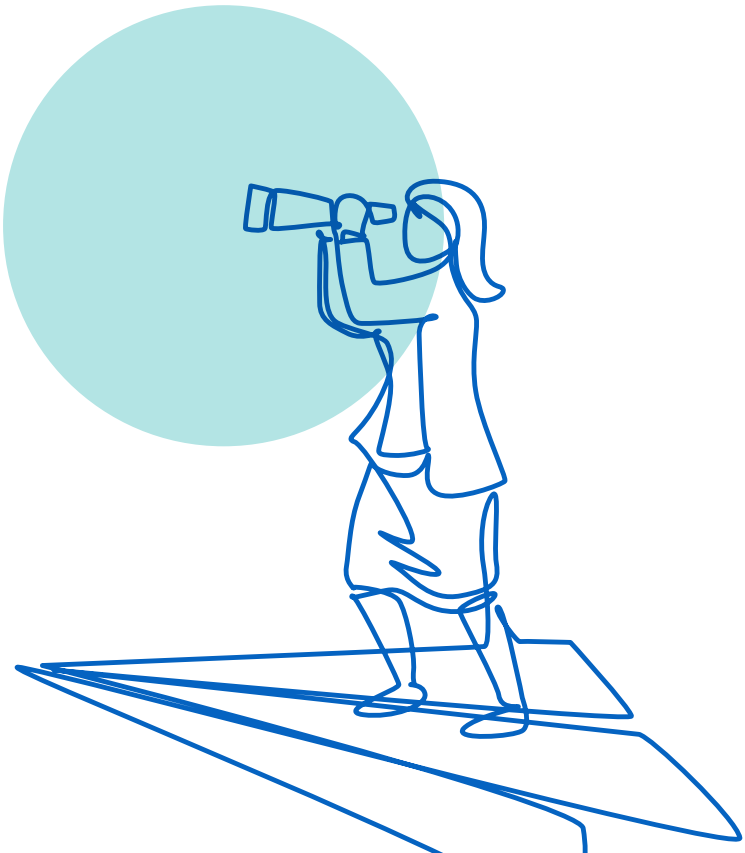
Summary points

- Climate litigation against companies has increased over the last decade, with a growing number of cases filed seeking to hold private companies accountable for their alleged impacts on the climate. These include forward-looking corporate framework cases that seek to limit companies' future emissions, as well as backward-looking polluter pays cases concerning liability for past emissions.
- Despite this increase in climate litigation, these legal actions have achieved only limited success. However, courts have begun to recognise, in principle, that companies may owe legal obligations to address climate change impacts caused by past emissions and to reduce future emissions.
- Academic literature has analysed global trends, legal duties and the role of scientific evidence in these cases. However, existing scholarship focuses primarily on claimants' arguments, with much less systematic analysis of corporate responses to litigation. This guide aims to address this evidential gap.
- We analyse 10 climate litigation case studies from Europe, the United States and New Zealand, identifying recurring themes and emerging trends in the corporate defences used in these cases.
- As climate litigation has matured, corporate defences have expanded from broad objections about legal duty, responsibility and justiciability towards more technical challenges focused on climate science and causation. Courts have engaged with these defences at both legal and substantive levels, and judicial reasoning has increasingly considered developments in climate science.
- Some corporate defences have only had limited success. Arguments framing climate change as a diffuse societal problem beyond judicial reach have been rejected by courts in some instances, and courts have increasingly confirmed their jurisdiction to hear climate disputes against corporate defendants.
- However, other corporate defences have been more successful in influencing judicial decision-making. Arguments highlighting scientific uncertainty and defences relating to market substitution have in some cases been persuasive to courts when assessing corporate liability.



Introduction

This guide examines corporate defences used in climate litigation. Drawing on 10 case studies from eight jurisdictions, it analyses how corporate defendants have deployed these defence strategies, highlighting recurring themes and emerging trends. It also discusses how courts have engaged with these defence strategies. The analysis provides legal practitioners, scholars and scientists with a systematic view of the legal arguments that are currently being used by corporate defendants.

Corporate climate litigation and corporate defences: an overview

The scientific evidence for climate change is clear. A wide range of actors, including civil society organisations and major greenhouse gas emitters, agree on the factual principles of global warming: the combustion of fossil fuels leads to rising temperatures. In recent climate litigation, corporate defendants have largely accepted these basic facts. Legal discussions have instead revolved around what responsibilities companies have for addressing climate change and how climate science can inform legal reasoning (Walker-Crawford, 2026; Si et al., 2023).

In recent years, there has been a steady rise in legal cases concerning the causes and consequences of climate change, both against state actors and private companies (Setzer and Higham, 2025; Network for Greening the Financial System, 2023). Corporate climate litigation refers to legal action against companies, particularly high greenhouse gas emitters, relating to their responsibility for addressing climate change (Bonavero Institute, n.d.). Legal cases fall into several broad categories (Setzer and Higham, 2025). This guide will focus on two: corporate framework and polluter pays cases:

- In **corporate framework cases**, claimants seek to ensure that companies implement changes in their corporate governance structure in a way that is aligned with broader climate policy, such as limiting warming to 1.5° Celsius.
- In **polluter pays cases**, claimants seek damages for climate-related harm allegedly caused by major emitters. Some cases incorporate corporate framework arguments, where the claimants seek accountability for historical emissions while also demanding future action.

Despite the increasing number and diversity of corporate strategic litigation cases, these legal actions have achieved only limited success. Few cases have resulted in final judgments, and many remain tied up in procedural disputes, particularly in the USA. Notably, courts have begun to recognise in principle that companies may owe legal obligations to address climate change impacts caused by past emissions and reducing future emissions. Both domestic and international courts are developing legal frameworks for corporate climate responsibility (Chan and Setzer, 2026; Peel, 2026).

Corporate climate litigation cases present significant challenges for courts around legal basis and evidence, and are the subject of a growing body of academic literature (Ganguly et al., 2018; Stuart-Smith et al., 2021). However, most of this work examines legal arguments from the perspective of present or future claimants. While there has been some research examining arguments made by corporate defendants, particularly on their framing strategies (Biber, 2012; Burger, 2013), there has been little systematic analysis of corporate defences used in climate litigation. Analysing corporate defence strategies is vital to develop a more complete mapping of arguments in climate litigation, and an understanding of how these companies shape legal discourse around their climate duties.

Box 1. Why examine corporate defences?

Corporate defences in climate litigation are clusters of arguments deployed systematically by corporate defendants, aiming to challenge legal grounds or factual allegations, the latter often involving debates around climate science.

Corporate defences can include contesting causation, legal duty and responsibility. Some corporate defendants publicly explain their positions when cases are filed against them, such as Dutch oil giant Shell when taken to court by Milieudefensie in the Netherlands (Shell, 2026) and Italian energy multinational Eni, facing a case brought by Greenpeace Italy (Eni, n.d.); this helps to shape public debate.

Climate litigation can create tangible impacts for companies. A study by Sato et al. (2024) found that financial markets see climate litigation as a financial risk. Cases filed against the so-called 'carbon majors', the largest corporate carbon emitters in the world, have seen significant responses from markets. Cases can shift investor and public perceptions, and trigger obligations for companies to disclose further information on their carbon and environmental footprint. The study also noted that climate-related legal filings and unfavourable court decisions against companies were associated with falling stock returns (Sato et al., 2024). Even when legal findings absolve companies of liability, climate litigation can lead to financial, operational and reputational costs. Increasingly, this influences how companies approach commercial risks associated with climate-related issues and how they communicate on these matters (Solana, 2020; Setzer, 2022).

In climate litigation, corporate defences play an important role in shaping how questions of accountability and causation are framed. While the arguments used are specific to each case, they may reflect broader positions on corporate responsibility, institutional competence, economic necessity and the role of courts in resolving climate disputes. Courts, in engaging with arguments used by corporate defendants, contribute to the development of legal standards on causation and justiciability in climate litigation. In other words, these arguments influence not only the outcome of individual cases, but also the development of broader legal standards and precedent.

For these reasons, it is useful for legal practitioners, scholars and scientists to engage with corporate defendants' evolving defence strategies. For legal practitioners on all sides, a systematic understanding of the arguments being advanced and how courts engage with them will inform case preparation and legal strategy. For legal scholars and scientists, engaging with these issues provides a basis for understanding how legal reasoning and scientific evidence interact in current climate litigation.

Note on scope and approach

In this guide, we examine corporate defences in climate litigation through an analytical and evidence-based lens. We are not advocating for particular claims or remedies, or evaluating the desirability of specific policy outcomes. Our focus is descriptive and analytical: we examine how corporate defendants have responded to climate-related claims, and how these responses interact with scientific evidence and evolving legal doctrines. The guide is intended to be a resource for judges, legal practitioners, scholars, communicators and others interested in developments in climate litigation. It provides readers with an overview of the corporate defence terrain in climate litigation, and contextualises case-specific legal objections within broader debates around how responsibility for the harm caused by climate change can be attributed and the limits of adjudication.

We describe and examine defendants' arguments, exploring their implications, rather than the motivations of the parties advancing them. Where we discuss broader consequences, this is to highlight questions that courts may increasingly be asked to address as climate litigation continues to develop.

Throughout the guide, we use the terms 'corporate defendants' and 'defendants' interchangeably to refer to private sector entities named as defendants in climate litigation. Our analysis focuses on arguments advanced by these entities in their capacity as defendants, without implying uniformity across corporate actors or legal systems.

Box 2. Research methods

Strategic litigation aims to achieve broader societal impacts beyond the outcome of individual cases, looking at long-term policy and regulatory changes (Bouwer and Setzer, 2020). We conducted an in-depth study of 10 strategic litigation cases against major corporate emitters. These cases have been filed across eight jurisdictions, including Germany, Switzerland, Belgium, New Zealand and USA. We carried out a systematic textual analysis to evaluate the arguments presented by claimants, and defendants' responses to these arguments and to questions regarding climate science. These claims and arguments were manually logged and coded. An earlier iteration of this research was published as an academic article in *Transnational Environmental Law* (Walker-Crawford, 2026).

We reviewed all available case documents up to March 2026, beginning with the initial pleading or summons and continuing through to the most recent accessible document, brief or court decision. The case studies are listed in Table 1 in the next section.

Structure of the guide

The guide is divided into three main parts:

- Part 1 introduces the defences used by corporate defendants in climate litigation.
- Part 2 discusses these defences in detail, providing examples from case studies.
- Part 3 examines how courts have engaged with corporate defences.

The guide concludes with a summary and reflection on what these findings may mean for future climate litigation. An appendix provides further details of the cases discussed in the guide.

Part 1: Counter-narratives: a typology of defences

Understanding the broad picture of corporate defences

As climate litigation has matured, the legal and scientific arguments advanced by claimants and defendants have become increasingly detailed and technically sophisticated. Earlier cases focused on the broad legal principle of corporate responsibility for harm created by climate change (e.g. early public nuisance and human rights-based claims challenging companies' general contributions to climate change). More recent claims have started to broaden their focus on whether corporate conduct has caused climate-induced harm and, where applicable, whether this harm was foreseeable. In practice, we can see both types of argument being used in older cases that are still running and in more recently launched claims.

For example, in the earlier claims of *Lliuya v. RWE* and *Milieudefensie v. Shell,* much of the initial legal arguments centred on whether companies had a legal duty regarding the climate and whether the courts were competent to address this issue. By contrast, towards the end of the proceedings, the parties were also engaging closely on specific scientific issues. In *Lliuya*, claimant Luciano Lliuya filed a case against German energy company RWE for its contribution to climate damage risks in his hometown of Huaraz in Peru. The case, which was filed in 2015, was decided 10 years later in May 2025. By then, the questions discussed were focused on flood risk to Lliuya's property. In *Milieudefensie*, claimants filed a case against Shell arguing that their contributions to climate change had violated their duty of care under Dutch law and human rights obligations, asking the company to reduce its global carbon emissions. The case was dismissed by the Hague Court of Appeal in November 2024. The core question at the time of dismissal was whether Shell had an obligation to reduce its CO_2 emissions, and if so, by how much.

As the *Lliuya v. RWE* and *Milieudefensie v. Shell* judgments demonstrate, climate litigation is increasingly moving into analysing scientific evidence on the climate and the specifics of how legal doctrine is applied. As cases move past threshold barriers of legal duty and justiciability, defendants have put more emphasis on contesting scientific evidence, including the rigour of attribution studies.

Identifying defences and strategies

In this guide, we distinguish between individual legal arguments (specific claims made in pleadings) and corporate defences (clusters of arguments deployed systematically).

In this context, identifying a defence does not mean merely listing discrete arguments advanced in individual cases. Rather, it involves analysing patterns across pleadings and judgments to detect recurring lines of legal reasoning that share an underlying logic or normative position. While defendants may formulate their arguments differently depending on the jurisdiction or facts in the case, these variations often reflect a common underlying stance, such as contesting the justiciability of a claim or framing causation as too diffuse to establish liability for harm. In this guide, we have categorised the arguments of the defendants reviewed in our case studies and grouped them according to shared themes and rationales.

The corporate defence strategies highlighted were chosen based on a combination of their frequency of use across cases and, when possible, the depth of discussion they received in judicial reasoning. While not exhaustive, our list captures the most frequently used and legally significant corporate defence strategies.

Table 1 outlines the types of corporate defence arguments discussed in further detail in Parts 2 and 3, with a brief description of each and case examples. The cases are explained in more detail in the Appendix.

Table 1. Trends in corporate defences		
Argument	**Description**	**Case examples***
Diffused responsibility	Defendant companies argue that responsibility for addressing climate change is broadly distributed across society and should not be concentrated on individual companies.	• *Falys v. TotalEnergies* (Belgium) • *Milieudefensie v. Shell* (Netherlands) • *People of the State of California v. BP p.l.c.* (USA) • *City and County of Honolulu v. Sunoco LP* (USA) • *County of Multnomah v. ExxonMobil* (USA) • *Notre Affaire à Tous v. TotalEnergies* (France)
Absence of legal duty	Defendant companies argue that their operations are both lawful and essential to society, and that no specific legal duties require them to reduce greenhouse gas emissions.	• *Falys v. TotalEnergies* (Belgium) • *County of Multnomah v. ExxonMobil* (USA) • *Smith v. Fonterra* (New Zealand)
Highlighting scientific uncertainty	Defendant companies argue that climate science presented by claimants lacks the legal rigour for admissible evidence.	• *Lliuya v. RWE* (Germany) • *Milieudefensie v. Shell* (Netherlands) • *Greenpeace Italy v. Eni* (Italy) • *People of the State of California v. BP p.l.c.* (USA)
Market substitution: "If not us, then someone else"	Defendant companies argue that restricting or eliminating their production of fossil fuels would not meaningfully reduce global greenhouse gas emissions as other suppliers would take their place.	• *Milieudefensie v. Shell* (Netherlands) • *Falys v. TotalEnergies* (Belgium) • *Asmania v. Holcim* (Switzerland)
Challenging scientific credibility	Defendant companies challenge the impartiality of scientific experts and evidence.	• *Lliuya v. RWE* (Germany) • *Milieudefensie v. Shell* (Netherlands)
Questioning judicial competence	Defendant companies question the competence of the judiciary to respond to climate change questions, framing these issues as better suited to the executive or legislative branches.	• *Falys v. TotalEnergies* (Belgium) • *Smith v. Fonterra* (New Zealand) • *Asmania v. Holcim* (Switzerland)

**Note: The links in column three lead to descriptions of the cases contained in the Sabin Center for Climate Change Law's climate litigation database, for those wishing to explore their details.*

Part 2: Trends in corporate defences

Strategy 1: Diffused responsibility

A common argument used by defendants is that scientific evidence linking their activities to impacts on the climate does not, in itself, establish individual corporate responsibility. Defendants argue that climate change is a complex, systemic phenomenon driven by a wide range of factors. These defendants characterise climate change as a societal challenge rather than the result of conduct attributable to any single corporate actor or sector (Prasad and Ansari, 2023). In support of this framing, defence teams have relied on language drawn from authoritative scientific sources. Notably, *Milieudefensie v. Shell*[1] and Chevron in *The People of the State of California v. BP p.l.c.* (Walker-Crawford, 2026) emphasised this point by citing an excerpt from the Intergovernmental Panel on Climate Change's Fifth Assessment Report (IPCC AR5) which states that anthropogenic greenhouse gas emissions were mainly driven by "population size, economic activity, lifestyle, energy use, land use patters, technology and climate policy" (IPCC, 2014).

Defendants have also argued that fossil fuel production responds to societal demand and that corporate responsibility is limited to the extraction and sale of lawful products. Emissions arising from downstream use (known as Scope 3 emissions) are framed as lying outside the control of producers. In *Falys v. TotalEnergies*, for example, the defence argued that decisions concerning end-use consumption of fossil fuel products fell beyond the energy company's sphere of influence.[2]

In some cases, the 'diffused responsibility' argument is coupled with claims that fossil fuel companies contribute to essential societal functions. For instance, in *Milieudefensie v. Shell*,[3] Shell's defence counsel argued that the company serves "fundamental interests" through its fossil fuel activities that help "to satisfy basic human needs". Similarly, in *Falys v. TotalEnergies*, the energy company argued that deployment of renewable energy in combination with the continued extraction of fossil fuels was essential for ensuring energy security. In *County of Multnomah v. ExxonMobil*[4] the defence noted that oil and gas were fundamentally and strategically important to US wellbeing and national security. In *City and County of Honolulu v. Sunoco*[5] the defence argued that it was misguided to fix blame on a handful of energy companies for a global phenomenon inherent to modern industrial society. From a legal perspective, this strategy raises important questions around how responsibility for the harm caused by climate change can be attributed. Framing climate change as a collective-action problem raises questions about duty and causation, particularly where harm results from the cumulative conduct of multiple actors over many years.

Strategy 2: Absence of legal duty

Corporate defendants have argued that there are no specific legal duties that give rise to liability. The form of this argument varies depending on the legal context.

In corporate framework cases, corporate defendants have argued that without specific statutory obligations, their existing operations comply with applicable law. For example, in *Falys v. TotalEnergies*, the defence team argued that there is currently no law or regulation governing the production of fossil fuels, and its mere compliance with State regulations regarding the energy transition means it was not committing any fault.[6]

[1] See Reply: https://cdn.climatepolicyradar.org/navigator/NLD/2019/milieudefensie-et-al-v-royal-dutch-shell-plc_f3df3f3c6cb15f0d166b43b3c59606a7.pdf
[2] See p. 171 of Main Conclusions: https://www.thefarmercase.be/wp-content/uploads/2025/04/Main-conclusions-HF-e.a.-vs.-TE-English-version_biffe.pdf
[3] See p. 206 of Statement of Defence: https://cdn.climatepolicyradar.org/navigator/NLD/2019/milieudefensie-et-al-v-royal-dutch-shell-plc_f3df3f3c6cb15f0d166b43b3c59606a7.pdf
[4] See Notice of Removal: https://cdn.climatepolicyradar.org/navigator/USA/2023/county-of-multnomah-v-exxon-mobil-corp_8726261b39079b5d99737adbce8bbf90.pdf
[5] See page 4 of Defendant Chevron's Answer to the First Amended Complaint: https://cdn.climatepolicyradar.org/navigator/USA/2020/city-county-of-honolulu-v-sunoco-lp_a178bd142452efd17062e501f59c7971.pdf
[6] See p. 347 of Conclusions of Falys: https://www.thefarmercase.be/wp-content/uploads/2025/06/250626-conclusions-synthese-HFvsTE_biffe.pdf

In polluter pays cases, corporate defendants have argued that there is an absence of policies and laws that could give rise to a cause of action. They have also challenged the legal bases of tort claims, such as in *County of Multnomah v. ExxonMobil*.[7] In cases such as *Smith v. Fonterra*, where customary law forms the basis of the claim of a novel duty of tort, the defence has argued that the use of the Indigenous legal concept *tikanga Māori* is unclear. *Tikanga Māori* is broadly defined as a set of values, standards, principles or norms that guide Māori conduct. The defence teams have argued that its principles are not explicitly aligned with tort law and there is no articulation of how *tikanga* principles work to create a claim that can be argued in court.[8] They have also argued that there is no adequate articulation of how the principle can work within English common law.

In cases when an Emissions Trading Scheme (ETS) is part of the claim, lawyers for fossil fuel companies have argued that ETS frameworks are market-based and do not necessarily impose mandatory reductions or prohibitions as the basis for liability.[9]

In summary, the 'absence of legal duty' line of defence frames corporate operations as compliant with existing legal frameworks. It emphasises the absence of specific legal duties as a basis for contesting liability, without making claims about the broader societal or ethical justification of these operations. **In civil litigation, however, lawful conduct does not necessarily preclude liability (Longstaff, 2025). In this context, compliance with existing laws may be relevant to the standard of care, but it does not determine whether a duty arises or has been breached.** Therefore, where possible, corporate defendants do not restrict their arguments to questions of regulatory compliance: they also directly challenge the existence, scope and content of the specific legal duties alleged by claimants.

Strategy 3: Highlighting scientific uncertainty

Defendant fossil fuel companies have challenged the methodological rigour of climate science presented in courts by claimants, questioning whether it meets the standards required for admissibility as legal evidence. In some cases, defendants have argued that existing scientific findings are not specific enough to support the claimants' case. By arguing that current climate science does not meet evidentiary and legal thresholds, whether because of lack of scientific certainty, consensus or specificity, they assert that no breach of legal duties can be established.

Corporate defendants have advanced this argument in several ways, including:

- Highlighting methodological uncertainties in climate modelling, such as in the case of *Lliuya v. RWE* (Walker-Crawford, 2026)
- Emphasising the lack of scientific consensus on quantifiable benchmarks, including emissions reductions targets, which led to the overturning of the decision on appeal of *Milieudefensie v. Shell*[10]
- Arguing that attribution science, particularly source attribution, is still a nascent, non-standardised field with significant limitations. This is one of the main counterpoints of the defence in *Greenpeace Italy v. Eni.*[11]

Different aspects of climate science and how it is used in evidence are discussed in greater depth in the other guides in this series.

Strategy 4: Market substitution – "If not us, then someone else"

Corporate defendants have argued that restricting or eliminating their production or sale of fossil fuels would not lead to a significant reduction in global greenhouse gas emissions, because demand would be met by other fossil fuel producers. This 'market substitution' argument contests causation and responsibility, and has featured prominently in several cases, including *Milieudefensie v. Shell* and *Asmania*

[7] See Notice of Removal: https://cdn.climatepolicyradar.org/navigator/USA/2023/county-of-multnomah-v-exxon-mobil-corp_8726261b39079b5d99737adbce8bbf90.pdf
[8] See Judgment: https://www.courtsofnz.govt.nz/assets/cases/2024/2024-NZSC-5.pdf
[9] See Appellant's Synopsis of Submissions on Appeal at https://cdn.climatepolicyradar.org/navigator/NZL/2020/smith-v-fonterra-co-operative-group-limited_dadc14f7d3a22a45f046a176623a1124.pdf
[10] See Statement of Defence on Appeal: https://cdn.climatepolicyradar.org/navigator/NLD/2019/milieudefensie-et-al-v-royal-dutch-shell-plc_5a52a0f331229d37ae063356c31eec60.pdf
[11] See Answer: https://storage.e.jimdo.com/file/af86b5a8-07a1-4e58-adcf-2d78ea9d0237/2.Comparsa%20costituzione%20ENI.pdf

v. Holcim. In *Milieudefensie v. Shell,*[12] for example, the defence argued that an order requiring Shell to reduce its fossil fuel sales would result in these being sold by another supplier.[13]

Under this strategy, defendants argue that unilateral production constraints may be offset by supply responses elsewhere (market substitution), thereby weakening the causal link between a single firm's conduct and aggregate carbon emissions.[14] They highlight the global nature of energy markets, arguing that unilateral reductions by individual companies, particularly those operating in jurisdictions with more stringent regulatory regimes, may be offset by increased production in other jurisdictions.

Strategy 5: Challenging scientific credibility

Some corporate defendants have questioned the impartiality of proposed court experts and scientists. In *Lliuya v. RWE*, for instance, the defence challenged the impartiality of a proposed court expert, arguing they could not act as a neutral witness. The expert had posted on social media expressing interest in climate litigation cases and had participated in events alongside lawyers involved in climate litigation, which, the defence argued, demonstrated a potential bias against fossil fuel companies (Walker-Crawford, 2026). Ultimately, the court appointed other experts.

Defendants have challenged the admissibility of evidence published in peer-reviewed academic journals by raising procedural and ethical concerns about alleged relationships between researchers and litigants. In *Lliuya v. RWE*, the defendant's lawyers challenged the independence of the authors of an attribution study submitted by the claimants. They alleged that some authors had publicly expressed views on corporate responsibility for climate change through social media and public commentary, and had professional associations with climate litigators. On this basis, the lawyers argued that the authors were part of a network of researchers, lawyers and advocates with a shared interest in the outcome of the litigation, and that the study could not be treated as independent evidence (Walker-Crawford, 2026).

The impartiality of scientific evidence has also been questioned by defendants in climate liability litigation in the US. In September 2025, defendant lawyers in the case of *County of Multnomah v. ExxonMobil* filed a motion to disregard two climate studies, asserting that the claimant's lead counsel failed to disclose his involvement with the studies that were published in a peer-reviewed journal and referenced in court documents (Clark, 2025).

In some cases, defendants have commissioned or funded scientific research relevant to ongoing legal cases. In the case of *Lliuya v. RWE*, which concerned the question of glacial lake flood risk in the Peruvian Andes, the defendant funded research which the company used to argue that there were "no indications of developing or impending glacier instability" in the area (SourceMaterial, 2022). Some of the results of that research were published in a journal article and presented as evidence (Kos et al., 2021).

Strategy 6: Questioning judicial competence

Defendants in climate litigation cases often argue that courts are not the right forum to resolve climate disputes, and that the issues can and should be addressed by political or other means; we refer to these as 'judicial competence' arguments. In these cases, the defences claim that any decision by the courts on climate litigation grounded on policy would amount to institutional overreach, stretching the limits of tort law and judicial capacity. In *Falys v. TotalEnergies*,[15] the defence argued that the diffuse nature of emissions makes it impossible to determine the place where the event giving rise to the claim occurred: the case was filed in Belgium, and the defendant argued that it should have been filed in France. There was no reason, according to the defence, for a departure from the general rule on jurisdiction based on the defendant's place of residence. In *Smith v. Fonterra* the defendants argued that the claims forwarded by the claimant, Michael Smith (an Indigenous elder and climate change spokesperson), were best reserved for the Parliament, not the courts.[16] In this way, the defences challenged the scope of the relief sought and

[12] See Reply: https://cdn.climatepolicyradar.org/navigator/NLD/2019/milieudefensie-et-al-v-royal-dutch-shell-plc_f3df3f3c6cb15f0d166b43b3c59606a7.pdf
[13] See Judgment: https://cdn.climatepolicyradar.org/navigator/NLD/2019/milieudefensie-et-al-v-royal-dutch-shell-plc_7906be91211b629326988390015e6701.pdf
[14] See p. 43 of Reply: https://cdn.climatepolicyradar.org/navigator/NLD/2019/milieudefensie-et-al-v-royal-dutch-shell-plc_f3df3f3c6cb15f0d166b43b3c59606a7.pdf
[15] See Order: https://www.climatecasechart.com/documents/hugues-falys-fian-greenpeace-ligue-des-droits-humains-v-totalenergies-the-farmer-case-order_424a
[16] See Judgment: https://www.courtsofnz.govt.nz/assets/cases/2024/2024-NZSC-5.pdf

raised questions about the courts' institutional authority to address claims involving systemic or policy-level changes.

In some cases, defendants have raised questions about the motivations and objectives of claimants pursuing litigation. In this context, defendants have argued that certain climate cases are primarily strategic, symbolic or advocacy-driven, rather than directed at addressing concrete and legally definable harm. Where establishing personal interest to file a case is an issue, defendants can use these arguments to show that the court lacks the authority to hear the case. For example, in *Falys v. TotalEnergies*,[17] the defence characterised the case as being driven by the activism of the claimant, farmer Hugues Falys, and that he was not pursuing a legitimate personal interest. In *Smith v. Fonterra*, the defence argued that the claim was contrived.[18]

[17] See Order: https://cdn.climatepolicyradar.org/navigator/BEL/2024/hugues-falys-fian-greenpeace-ligue-des-droits-humains-v-totalenergies-the-farmer-case_353654896dbabcb095ed5dda92afd8bc.pdf

[18] See Judgment: https://cdn.climatepolicyradar.org/navigator/NZL/2020/smith-v-fonterra-co-operative-group-limited_a1887ae109e2f167d4cf546541a6a8da.pdf

Part 3: How courts navigate the defence landscape

Recent judicial decisions illustrate how courts are engaging with corporate defences used in climate litigation. In this section we revisit the six corporate defences that we identified in Part 2 and examine how courts have engaged with them. There have been few judgments in the cases, and many are still progressing. We provide examples of how courts have dealt with some of the issues, particularly referring to the *Lliuya v. RWE* and *Milieudefensie v. Shell* judgments, and the admissibility decision in *Asmania v. Holcim*. We recognise that some of these defences are present in other contexts where the courts have not yet had the opportunity to deal with them. Where relevant, we have included references to other judgments.

Strategy 1: Diffused responsibility

This defence frames climate change as a systemic, societal phenomenon driven by multiple actors, such that the contribution of any given company is too small to establish liability. It is closely related to the 'drop in the ocean' argument, in which defence teams argue that a defendant's share of global emissions is so limited that it cannot be held to have contributed meaningfully to the risk of harm.

In *Lliuya v. RWE*,[19] the German Higher Regional Court of Hamm confirmed that the fact that RWE was responsible for approximately 0.38% of global industrial greenhouse gas emissions did not, in principle, preclude liability. Also, it noted that companies cannot rely on being simply 'one of many' emitters. The court acknowledged that while the harm caused by climate change is cumulative, proportional responsibility may be legally definable even where numerous actors contribute to the same risk.

This viewpoint was echoed by the Swiss Zug Cantonal Court in *Asmania v. Holcim*.[20] In its preliminary judgment determining whether the complaint met the necessary legal criteria to be considered, the court engaged with the defendant's arguments in detail. The court clarified the defendant's responsibility and noted that every single contribution is essential for counteracting climate change. It further held that the existence of other greenhouse gas emitters did not alter the merits of the action.

In the *Milieudefensie v. Shell*[21] appeal decision, the Dutch court took a similar approach, rejecting the argument that Shell's contribution was legally irrelevant because of the global nature of climate change. It noted that the multiplicity of emitters did not negate the potential relevance of individual corporate conduct.

Taken together, these decisions suggest a judicial distinction between the factual diffusion of emissions and the legal relevance of individual contribution. While climate change is undoubtedly a collective-action problem, courts have indicated that this does not automatically preclude individual responsibility under private law.

Strategy 2: Absence of legal duty

Under this strategy, corporate defendants argue that there is no specific legal duty requiring them to reduce emissions or address climate impacts. The argument takes several forms: that current legal frameworks like the Paris Agreement bind states rather than companies, and that defendant companies are compliant with existing regulatory regimes.

In *Milieudefensie v. Shell*,[22] the court recognised that Shell could, in principle, owe a duty of care to reduce carbon emissions, even though it ultimately declined to impose a specific obligation to do so. This

[19] See Judgment: https://cdn.climatepolicyradar.org/navigator/DEU/2015/luciano-lliuya-v-rwe-ag_e585fec2553b5e2374b8a576e43d07ce.pdf
[20] See Judgment (in German): https://zg.ch/de/gerichte/zivil-und-strafrechtspflege/kantonsgericht#MitteilungA120239
[21] See Judgment: https://cdn.climatepolicyradar.org/navigator/NLD/2019/milieudefensie-et-al-v-royal-dutch-shell-plc_7906be91211b629326988390015e6701.pdf
[22] See Judgment: https://cdn.climatepolicyradar.org/navigator/NLD/2019/milieudefensie-et-al-v-royal-dutch-shell-plc_7906be91211b629326988390015e6701.pdf

recognition directly countered the 'no-duty' defence, which argues that climate mitigation obligations apply exclusively to states.

Similarly, in *Lliuya v. RWE*,[23] the Hamm court affirmed that corporate liability for climate-related harm is possible, in principle, under general nuisance doctrines. The absence of a specific climate statute directed at companies did not bar the claim at the threshold stage.

These decisions show that courts may be unwilling to accept that regulatory compliance alone resolves questions of civil liability. Accordingly, absence of an explicit statutory reduction target for a company does not necessarily mean that no duty can arise under tort or human rights law. Compliance with public regulation may be relevant to the standard of care, but it does not determine whether a duty arises or has been breached.

Strategy 3: Highlighting scientific uncertainty

Corporate defendants increasingly focus their defence on scientific methodological uncertainty. Under this strategy, defendants challenge the admissibility, consensus or precision of climate science analysis, arguing that scientific evidence does not meet legal standards for causation or breach.

In *Lliuya v. RWE*,[24] the Hamm court noted that the evidence provided was sufficient to show that the alleged threat could be attributable to the defendant's actions. The case was permitted to proceed to the evidentiary stage, signalling that scientific uncertainty does not automatically bar adjudication (Climate Judiciary Project Team, 2025; Schirmer, 2025).

However, in *Milieudefensie v. Shell*, scientific uncertainty proved more consequential. The Court of Appeal agreed that Shell owed a duty of care, but it held that there was insufficient scientific consensus to determine a precise emissions reduction pathway applicable to the company (Johanssen et al., 2025). As a result, the Court overturned the lower court's order requiring Shell to reduce its emissions by 45% by 2030. In this respect, the argument emphasising scientific uncertainty was partially successful; it did not defeat the existence of a duty, but it did shape the remedy.

In summary, scientific uncertainty may influence judicial decision-making. Courts are increasingly grappling with complex scientific evidence in detail, engaging not only with conclusions, but also with underlying methodological questions.

Strategy 4: Market substitution – "If not us, then someone else"

Under the market substitution defence, defendants argue that restricting or eliminating their production would not reduce global emissions because other producers would fill the gap. This moves the focus from individual conduct to aggregate market dynamics. In their decision-making, courts have diverged in their treatment of this argument.

In *Milieudefensie v. Shell*, the court agreed that this argument meant the claimants did not have a strong enough interest to demand a reduction in Scope 3 emissions. It subsequently refrained from imposing a specific percentage reduction for Scope 1, 2 and 3 emissions (Nieto, 2024).[25] By contrast, in the admissibility decision in *Asmania v. Holcim*,[26] the court rejected the defence team's argument that if the action was upheld, greenhouse gas emissions would be shifted to other companies in the cement industry. Going further, the court said the fact that other companies also emit greenhouse gases did not alter the merits of the action.

The market substitution argument exposes different normative and ethical assumptions that may underlie legal arguments in climate litigation. Claimants often frame corporate responsibility in terms of duties not to cause foreseeable harm, irrespective of the actions of third parties. Defendants, by contrast, tend to emphasise the overall effectiveness of individual action in achieving aggregate reductions in

[23] See Judgment: https://cdn.climatepolicyradar.org/navigator/DEU/2015/luciano-lliuya-v-rwe-ag_e585fec2553b5e2374b8a576e43d07ce.pdf
[24] See Judgment: https://cdn.climatepolicyradar.org/navigator/DEU/2015/luciano-lliuya-v-rwe-ag_e585fec2553b5e2374b8a576e43d07ce.pdf
[25] See Blog: https://www.ejiltalk.org/the-market-substitution-argument-in-milieudefensie-et-al-v-shell-judgment-a-threat-to-justiciability-for-scope-3-emissions/
[26] See Admissibility Decision: https://zg.ch/de/gerichte/zivil-und-strafrechtspflege/kantonsgericht#MitteilungA120239

carbon emissions. While courts do not typically resolve such disputes in explicitly ethical terms, these underlying normative assumptions can shape how arguments about causation, proportionality and remedy are received by the court.

Strategy 5: Challenging scientific credibility

Under this strategy, corporate defence teams challenge the impartiality of scientific experts and the credibility of research relied upon by claimants.

In *Lliuya v. RWE*, the court appointed its own experts to assess glacial lake flood risk (Reiser, 2025), managing concerns about the credibility of this evidence by following procedural safeguards, such as allowing both parties to review the expert evidence provided. The defendant subsequently challenged the independence of the authors of a study submitted as evidence – on the basis of their public statements and alleged professional associations with climate litigators. However, the court found the study to be an independent piece of research with greater evidentiary weight than research commissioned by the claimant or defendant (Walker-Crawford, 2026).

In *County of Multnomah v. ExxonMobil*, the defendants sought to have peer-reviewed research removed from the proceedings by raising alleged conflicts of interest between researchers and litigants.[27, 28]

When scientific credibility is challenged, courts have tended to address credibility issues procedurally, scrutinising expert qualifications and appointing neutral experts where necessary. Nevertheless, these forms of defence may increase the procedural complexity of climate litigation cases and raise broader questions about what constitutes independence in climate-related expertise.

Strategy 6: Questioning judicial competence

Defendants often argue that climate litigation raises political questions better addressed by legislatures and executives. Under this defence, defendants frame legal cases as symbolic, strategic or advocacy-driven, and argue that courts lack the institutional competence to supervise systemic green transitions.

Questions regarding judicial competence and the role of political decision-makers are highly dependent on the country and legal system in which the action takes place. Within available judgments, courts have engaged to some extent with these issues. In *Kivalina v. ExxonMobil*,[29] an early climate litigation case, the US District Court for the Northern District of California court found that claimants failed "to confront the fact that resolution of their nuisance claim requires the judiciary to make a policy decision about who should bear the cost of global warming".[30] This was one of the reasons the court ultimately dismissed the claim.[31] However, some more recent decisions have taken a more expansive view of the role of the judiciary in climate litigation disputes. In *Smith v. Fonterra*,[32] the New Zealand Supreme Court rejected the argument that climate claims necessarily fall outside judicial competence. Similarly, in the admissibility decision in *Greenpeace Italy v. Eni*, the judges affirmed that courts may hear climate-related claims grounded in human right principles (Andrich et al., 2025).

Courts have also addressed this issue in the context of the motivation of claimants, where defendants have argued that claims are symbolic and arbitrary, reflecting an interest in a wider policy outcome as opposed to a specific legal remedy. In the *Asmania v. Holcim* admissibility decision, the Swiss court considered whether the case was a private or public dispute (the latter outcome would have denied the court jurisdiction to hear the case). While recognising that "climate change undoubtedly has a political dimension", the court found that the "private interests of the claimants are not overshadowed" by this.[33]

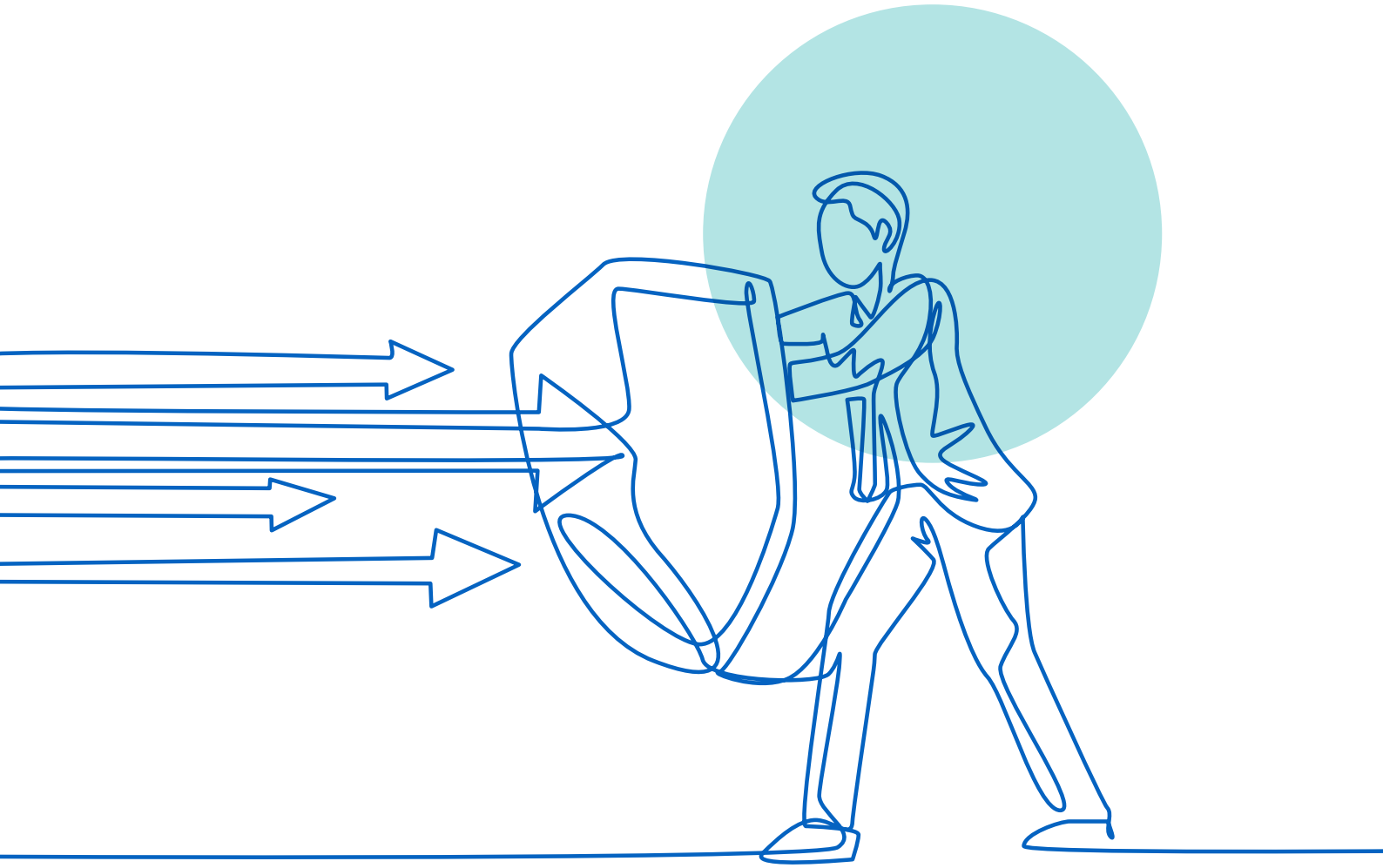
[27] See Motion to Strike: https://www.climatecasechart.com/documents/county-of-multnomah-v-exxon-mobil-corp-motion_c07e
[28] See Reply: https://cdn.climatepolicyradar.org/navigator/USA/2023/county-of-multnomah-v-exxon-mobil-corp_d0fbb8a2d321626f34ca1f9c9d32a611.pdf
[29] *Kivalina v. ExxonMobil* is not included in case studies because of lack of access to documents
[30] See Order: https://cases.justia.com/federal/district-courts/california/candce/4:2008cv01138/200771/194/0.pdf
[31] See p12 Kivalina v. ExxonMobil: https://cdn.climatepolicyradar.org/navigator/USA/2008/native-village-of-kivalina-v-exxonmobil-corp_2d979c9aacf1157cb6d32b7411908fcd.pdf
[32] See Judgment: https://cdn.climatepolicyradar.org/navigator/NZL/2020/smith-v-fonterra-co-operative-group-limited_a1887ae109e2f167d4cf546541a6a8da.pdf
[33] Quotes translated from p21 of the German original of the admissability decision.

In response to the defendant's argument that the claim was "random" and "arbitrary", the court noted that this is "in line with the nature of civil proceedings".[34]

While it may be challenging to make general claims about how courts respond to specific questions of judicial competence, courts have, in some cases, established jurisdiction to hear climate disputes against corporate defendants.

Taken together, these observations illustrate broader trends in climate litigation. Courts encounter recurring corporate defences about the quality and sufficiency of evidence, establishing causation and the limits of governmental policy. Courts are increasingly engaging with these corporate defences at both legal and substantive levels.

How courts respond to defence arguments may be shaped by the jurisdictional context: which strategies are persuasive, and which are consistently rejected, will depend on judicial philosophy and the ways in which arguments are presented in court. Future cases may further clarify how courts balance evidentiary complexity, doctrinal limits and separation-of-powers concerns in corporate defences.



[34] Quotes translated from p22 of the German original of the admissability decision.

Conclusion

Corporate defences in climate litigation reflect a range of established legal arguments through which defendants contest the basis, scope and implications of claims brought against them. These arguments engage with questions of causation, duty, scientific evidence and institutional competence – questions that courts across jurisdictions are increasingly being asked to address. As the number and diversity of climate litigation cases grow, so too does the range and technical sophistication of corporate defences.

The six defences we have identified in this guide illustrate how legal arguments in this field operate across multiple dimensions simultaneously. Defendants may contest the existence of a legal duty or the evidentiary basis of claims, question the impartiality of scientific experts or argue that the relief sought exceeds the institutional capacity of courts. These arguments are not mutually exclusive and are often advanced in combination.

In climate cases, lawyers and judges face the shared challenge of engaging with complex scientific and legal questions. For courts, this involves grounding judicial reasoning in established legal principles, while evaluating the scientific evidence presented by both sides. This is because arguments that may appear novel in one jurisdiction have often been adjudicated on elsewhere, and courts can draw on an expanding body of comparative case law in navigating these questions (Climate Litigation Network, 2025).

Appendix. Climate legal cases studied

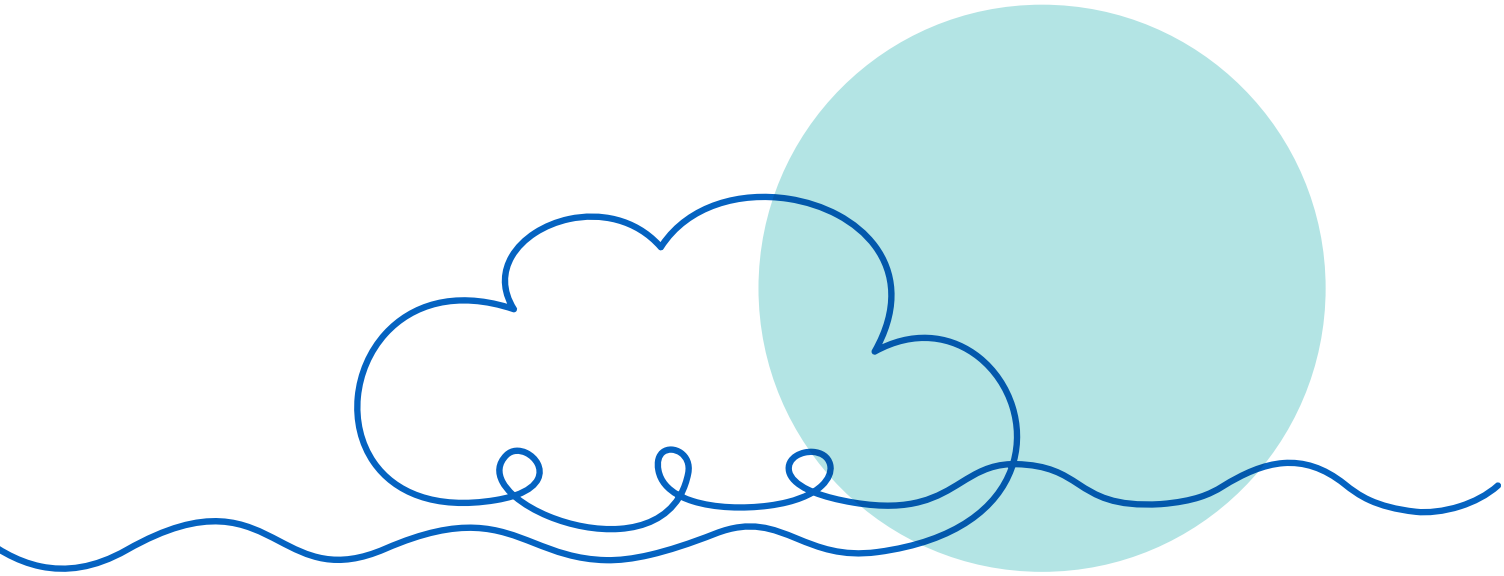
We selected 10 legal cases from eight different jurisdictions for our analysis. The cases were selected using the following criteria:

- Broad strategic argument designed to set a legal precedent
- Substantial discussions and analysis of climate science
- Available written arguments from the corporate defendant relating to scientific evidence.

The cases were:

1. **Lliuya v. RWE.** This case was filed by Peruvian farmer and mountain guide Saúl Luciano Lliuya in Germany in 2015 against German utility giant RWE and was concluded in 2025. It sought, among other demands, for RWE to pay its proportional share, around US$20,000, towards protective measures against flood risk caused by glacial retreat, reflecting its contribution to historical greenhouse gas emissions, calculated to be 0.38%. After nearly a decade of proceedings, the Higher Regional Court of Hamm released its decision. While it ultimately dismissed the individual claim, finding that the specific flood risk did not meet the legal threshold, the court confirmed that major emitters can, in principle, be held liable for their contribution to harms related to climate change.
2. **Milieudefensie v. Shell.** Milieudefensie [Friends of the Earth Netherlands] and other non-governmental organisations filed a claim in the Netherlands against Shell, demanding that the fossil fuel giant reduce its carbon dioxide emissions by 45% by 2030 relative to 2019, in line with the goals of the Paris Agreement. In 2024, the Hague Court of Appeal decided in favour of Shell. While the Court agreed that Shell had a duty of care to reduce its emissions, it found that there was a lack of scientific consensus to determine the precise emissions reduction pathway.
3. **The People of the State of California v. BP p.l.c.** In this ongoing case, the US cities of Oakland and San Francisco claim that respondents (BP, Chevron, ConocoPhillips, ExxonMobil and Royal Dutch Shell) are liable for costs of abating the climate impacts that the cities' residents experience. The presiding judge organised a climate science tutorial early in the process. The cases remain pending.
4. **City and County of Honolulu v. Sunoco LP.** The claimants filed this case in Hawaii against several fossil fuel companies, alleging that the defendants were aware of the climate impacts of fossil fuels and made misleading public statements about those impacts. The defendants are Sunoco LP; Aloha Petroleum, Ltd; Aloha Petroleum LLC; ExxonMobil Corporation; ExxonMobil Oil Corporation; Royal Dutch Shell Plc; Shell Oil Company; Shell Oil Products Company LLC; Chevron Corporation; Chevron USA Inc.; BHP Hawaii Inc.; BP Plc; BP America Inc.; Marathon Petroleum Corporation; ConocoPhillips; ConocoPhillips Company; Phillips 66; and Phillips 66 Company.
5. **County of Multnomah v. ExxonMobil.** In this case, a county in the US state of Oregon sued not only major oil and gas companies, but also their alleged enablers, such as the American Petroleum Institute, the Western States Petroleum Association, and McKinsey and Company. Claimants alleged that the defendants misled the public for decades about the risks associated with burning fossil fuels. The case remains pending.
6. **Falys v. TotalEnergies.** Hugues Falys, a Belgian farmer, along with several NGOs, filed a case in Belgium against TotalEnergies seeking damages and an injunction. The claimants asked the court to request that TotalEnergies implement a credible transition plan that includes halting new investments in fossil fuel projects and committing to a 75% reduction in oil and gas by 2040. A decision was released by the Hainaut Commercial Court in Belgium in March 2026 declaring the case admissible.
7. **Greenpeace Italy v. Eni.** In 2023, 12 Italian citizens and two NGOs filed a human rights and tort suit before the Court of Rome against Eni, an Italian multinational energy company, and two of its co-owners. The claimants alleged that Eni had failed to take adequate action to curb contributions to climate change despite its knowledge of the risks surrounding carbon emissions. The claimants asked the court to acknowledge the damage caused and to rule that Eni cut its emissions by 45% by 2030, relative to 2020 levels. The defendants argued that the claim is groundless, but the court ruled in July 2025 that the claim was admissible on human rights grounds.

8. **Smith v. Fonterra.** Michael Smith, an Indigenous elder and climate change spokesperson for the Iwi Chairs Forum in New Zealand, brought a case against seven defendants (Fonterra Co-Operative Group Ltd; Genesis Energy Ltd; Dairy Holdings Ltd; New Zealand Steel Ltd; Z Energy Ltd; Channel Infrastructure NZ Ltd; and BT Mining Ltd), alleging that their contributions to climate change constitute a public nuisance, negligence and breach of a duty to cease contributing to climate change. In subsequent pleadings, Smith used the Maōri principle of tikanga Maōri, which incorporates concepts of guardianship, protection and stewardship of the natural environment. The substantive hearing of the case has been scheduled for April 2027.
9. **Notre Affaire à Tous v. TotalEnergies.** The French climate justice NGO Notre Affaire à Tous and several co-claimants brought a case against TotalEnergies under the French corporate duty of vigilance law. This law requires large companies to set out a plan with detailed measures to point out risks and prevent human rights abuses that could arise from their operations. The claimants alleged that Total's vigilance plan was grossly insufficient. In 2024, the Paris Court of Appeal held that the legal actions were admissible, granting a request for an in-depth examination of defendants' due diligence plans.
10. **Asmania v. Holcim.** Asmania et al. are islanders from Pari, Indonesia, who have filed a case against Swiss-based major building materials company, Holcim in the Swiss courts. They allege that Holcim is civilly liable for climate change-related damages in the island of Pari and that their personality rights have been violated as a result. In December 2025, the Cantonal Court of Zug, Switzerland, delivered its admissibility decision, affirming that it had jurisdiction to hear the case. Holcim has appealed the decision.



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