



CADWALADER
CLIMATE
Connecting Climate Change and the Law

Climate Lawsuit Against Shell Directors Dismissed

May 16, 2023



By Jason Halper
Partner and Co-Chair | Global Litigation



By Sara Bussiere
Special Counsel | Global Litigation

On May 12, 2023, the UK High Court dismissed a lawsuit filed by ClientEarth against Shell's Board of Directors, finding that ClientEarth failed to establish a *prima facie* case against the Board for its management of climate risks. The lawsuit asserted that the directors violated duties under the Companies Act, which creates a duty to promote the success of the company and to act with reasonable care, skill, and diligence. ClientEarth claimed that, among other things, Shell was required to adopt and implement an energy transition strategy consistent with the Paris Agreement in discharge of these obligations. Shell's "Energy Transition Strategy," according to the complaint, fails to align with the Paris Agreement because although it establishes a 2050 net-zero target, it excludes short- and medium-term targets to cut scope 3 emissions when such emissions account for 90% of the company's overall emissions and are calculated to be reduced by just 5% by 2030. ClientEarth sought an order compelling Shell to amend its plan to address these deficiencies.

The High Court disagreed, finding that the allegations were insufficient to state a violation of the Companies Act, explaining that "[t]he law respects the autonomy of the decision-making of the directors on commercial issues and their judgments as to how best to achieve results which are in the best interests of their members as a whole." The court found that ClientEarth failed to establish that no reasonable director would have taken the same action as the Board with respect to climate risk. The court further noted that the climate-related duties asserted in the complaint were "vague" and could not establish "enforceable personal legal duties."

Taking the Temperature: Last month, we discussed the High Court's dismissal of [another first-of-its-kind lawsuit](#) asserting similar breach claims against the directors of the principal pension plan for UK higher education system employees. That case and the

court's ruling here demonstrate that, as we have discussed, plaintiffs are likely to face an uphill battle in successfully bringing claims for supposed climate-related failures. As the High Court found here, directors generally maintain wide discretion to determine the course of action that, in their view, is in the best interests of the company as a whole. In the United States, courts in Delaware and many other jurisdictions will not second-guess directors' decisions or substitute their own judgment for that of the board so long as such decisions are made on an informed basis, in good faith, and in the best interests of the company and its stockholders. However, acting on an informed basis to make decisions that are best for the company on climate-related issues means that, in our view, boards cannot and should not sit idly by without addressing the risks of climate change. As we have previously advised, boards and management should focus on climate-related governance (i.e., monitoring and assessing material risks and opportunities), data collection/assessment (including alignment with SBTi or other data standard setters) and disclosure (including necessary caveats or qualifications on articulated climate goals) to avoid litigation exposure.